

<p>Attorney or Party Name, Address, Telephone & FAX Numbers, State Bar Number & Email Address</p> <p>Baruch C. Cohen, Esq. (SBN 159455) LAW OFFICE OF BARUCH C. COHEN A Professional Law Corporation 4929 Wilshire Boulevard, Suite 940 Los Angeles, California 90010 (323) 937-4501 Fax (323) 937-4503 baruchcohen@baruchcohenesq.com</p> <p>Charles Shamash, Esq. (SBN 178110) CACERES & SHAMASH, LLP 9701 Wilshire Boulevard, 10th Floor Beverly Hills, CA 90212 (310) 205-3400 Fax: (310) 878-8308 cs@locs.com</p> <p><input type="checkbox"/> Plaintiff(s) appearing without attorney <input checked="" type="checkbox"/> Attorney for Plaintiff(s)</p>	<p>FOR COURT USE ONLY</p>
<p align="center">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION</p>	
<p>In re:</p> <p>BRANDON MICHAEL MCDOWELL, aka "trvpkid_69"</p> <p align="right">Debtor(s).</p>	<p>CASE NUMBER: 6:22-bk-14752-MH ADVERSARY NUMBER: 6:23-ap-01041-MH CHAPTER: 7</p>
<p>MATT CAPELOUTO AND CHRISTINE CAPELOUTO</p> <p align="right">Plaintiff(s),</p> <p align="center">vs.</p> <p>BRANDON MICHAEL MCDOWELL, aka "trvpkid_69"</p> <p align="right">Defendant(s).</p>	<p align="center">PLAINTIFF'S AMENDED MOTION FOR DEFAULT JUDGMENT UNDER LBR 7055-1</p> <p>DATE: 9-11-2024 TIME: 3:00 pm COURTROOM: 301 ADDRESS: 3420 Twelfth Street, Riverside CA</p>

TO THE DEFENDANT, DEFENDANT'S ATTORNEY AND OTHER INTERESTED PARTIES:

- Name of Defendant(s) against whom default judgment is sought (*specify name*): Brandon Michael McDowell, aka "trvpkid_69"
- Plaintiff filed the complaint in the above-captioned proceeding on (*specify date*): 05/11/2023
- The Summons and Complaint were served on Defendant by ☐ personal service ☒ mail service on the following date (*specify date*): 05/12/2023
- A true and correct copy of the completed return of summons form is attached.

"Bankruptcy Code" and "11 U.S.C." refer to the United States Bankruptcy Code, Title 11 of the United States Code.
"FRBP" refers to the Federal Rules of Bankruptcy Procedure. "LBR" and "LBRs" refer to the Local Bankruptcy Rule(s) of this court.

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

5. The time for filing an answer or other response expired on (*specify date*): 06/12/2023
6. No answer or other response has been filed or served by Defendant.
7. The default of Defendant:
- a. ☐ Has not yet been entered, but is requested
- b. ☒ Was entered on (*specify date*): 06/15/2023
8. **A Status Conference:**
- a. ☒ Is scheduled for (*specify date, time, and place*): 9/11/2024 at 3:00 PM
Ctrm 301,3420 Twelfth St., Riverside, CA 92501
- b. ☐ Was held on (*specify date, time, and place*): _____
9. As proof that Plaintiff is entitled to the relief requested in the complaint, Plaintiff:
- a. ☒ Relies on the complaint and attached documents.
- b. ☒ Attaches the following documents to establish a *prima facie* case:
- (1) ☒ Declaration of (*specify*): Baruch C. Cohen
- (2) ☒ Declaration of (*specify*): Matt Capelouto
- (3) ☒ Declaration of (*specify*): Robert P. Karwin, Esq.
10. As further support for entry of a default judgment, Plaintiff submits a memorandum of points and authorities (optional).
11. **DECLARATION OF NON-MILITARY STATUS** (Servicemembers Civil Relief Act, 50 U.S.C. chapter 50 (§§ 3901-4043)). The undersigned party or counsel declares under penalty of perjury, with respect to each Defendant against whom a default judgment is sought by this motion:
- a. ☒ Defendant is not currently in military service. The facts that support this statement are as follows (*see the court's website for information about how to verify non-military status*):
- b. ☐ Defendant is currently in military service. The facts that support this statement are as follows (*if this box is checked, the plaintiff must attach a supplement to this motion addressing the requirements in 50 U.S.C. § 3931(b)(2) to appoint an attorney for the Defendant before entering a judgment*):
- c. ☐ I am unable to determine whether or not Defendant is in military service. The facts that support this statement are as follows (*if this box is checked, the plaintiff must attach a supplement to this motion addressing the bond requirement in 50 U.S.C. § 3931(b)(3)*):

12. Defaulting party is not an infant or incompetent party.

Plaintiff requests that this court enter a default judgment in favor of Plaintiff. A copy of the lodged proposed default judgment is attached.

Date: 9/05/2024

Respectfully submitted,

/s/ Baruch C. Cohen

Printed name of law firm

A handwritten signature in black ink, appearing to read 'Baruch C. Cohen', is written over a horizontal line.

Signature

Baruch C. Cohen

Name of Attorney for Plaintiff or Plaintiff

**DECLARATION OF BARUCH C. COHEN - IN SUPPORT OF
PLAINTIFFS' AMENDED MOTION FOR DEFAULT JUDGMENT UNDER LBR 7055-1**

I, **Baruch C. Cohen**, declare and state as follows:

1. The facts stated below are true and correct to the best of my personal knowledge and if called upon to testify to them, I could and would competently do so.
2. I proudly represent plaintiffs Matt & Christine Capelouto in this Adversary Action.
3. This Declaration is in support of the **PLAINTIFFS' AMENDED MOTION FOR DEFAULT JUDGMENT UNDER LBR 7055-1** filed by my clients Plaintiffs Matt & Christine Capelouto vs. Brandon Michael McDowell, aka "trvpkid_69" 6:23-ap-01041-MH.

BACKGROUND FACTS

4. The Capelouto's ("Plaintiffs") are the married couple and the biological parents of decedent, Alexandra ("Alex") Capelouto - who was born February 24, 1999. They are now bereaved parents. (Capelouto Dec)
5. In December of 2019, Alex was in her sophomore year Arizona State University, with a major in Sociology. After graduation, her plan was to become a social worker so that she could help others. On **December 22, 2019**, she was staying at her parent's home for her winter break from school. She was 20 years old. (Capelouto Dec)
6. Defendant McDowell is a 25-year old individual residing in Los Angeles, California, currently incarcerated in prison at FCI Terminal Island, 1299 Seaside Avenue, San Pedro, California 90731, prisoner # 79243-509. McDowell was represented by Summer M Shaw of Shaw & Hanover, PC., and is now in pro per.
7. On or about 12-22-2019, McDowell resided and operated a business out of 11434 Millard Dr., Riverside, California 92503 comprised of manufacturing, distribution, and sales of narcotics including, but not limited to oxycontin and fentanyl. (Capelouto Dec)
8. On or about 12-22-2019, McDowell was contacted via the social media app Snapchat by Alexandra, who inquired about purchasing Percocet pills, a prescription painkiller. (Capelouto Dec)

- 1 9. McDowell agreed to sell Alexandra Percocet/Oxycontin pills. (Capeluto Dec)
- 2 10. McDowell sold 11 pills to Alexandra that he represented to be the pure Percocet/Oxycontin
- 3 Alexandra requested, that he later described to law enforcement as blue “Oxys” or “M30s.”
- 4 However, the pills were not pure Percocet/Oxycontin. Each pill actually contained a lethal
- 5 dose of the deadly opioid fentanyl and were counterfeit pills.¹ (Capeluto Dec)
- 6 11. The pills were manufactured using fentanyl as either a filler or total replacement for
- 7 Percocet/Oxycontin in order to defraud purchasers and create a higher profit margin for the
- 8 seller, distributor, and manufacturer of the pills. They were manufactured to look identical to
- 9 pure oxycontin pills so that the alterations were undetectable by the purchaser or user.
- 10 (Capeluto Dec)
- 11 12. McDowell knew that it was illegal for him to sell the pills (to Alexandra) and that they
- 12 contained fentanyl or some other federally controlled substance. See, McDowell’s *Plea*
- 13 *Agreement*.
- 14 13. Prior to 12-22-2019, McDowell knew that ingestion of Fentanyl was dangerous. See,
- 15 McDowell’s *Plea Agreement*.
- 16 14. Prior to 12-22-2019, McDowell knew that ingestion of Fentanyl could cause death in humans.
- 17 See, McDowell’s *Plea Agreement*.

18

19 ¹ According to the CDC, there were 70,601 overdose deaths involving synthetic opioids other

20 than methadone (primarily fentanyl) in the United States in 2021. This represents a 23.3% increase

21 from the previous year. Fentanyl is a powerful synthetic opioid that is 50 to 100 times more potent

22 than morphine. It is often mixed with other drugs, such as heroin, cocaine, and methamphetamine,

23 and can be deadly even in small doses. Fentanyl works by binding to opioid receptors in the brain and

24 spinal cord. This binding slows down the body's respiratory system, which can lead to respiratory

25 arrest and death. Because of fentanyl’s extreme potency, the risk of overdose death is great,

particularly when the user is inexperienced or unaware of what substance he or she is using. See, e.g.

United States v. Harris, 774 Fed. Appx. 937, 941 (6th Cir. 2019) (quoting the Sentencing

Commission’s finding. The rise in fentanyl-related deaths is a major public health crisis in the United

States. Here is the national death toll for deaths by fentanyl for the years 2019-2023:

<u>Year</u>	<u>Number of deaths</u>
2019	50,100
2020	69,710
2021	70,601
2022	106,699 (provisional)
2023	110,000 (estimated)

- 1 15. On 12-22-20219, McDowell knew that ingestion of Fentanyl could cause death to Alexandra.
2 See, McDowell's *Plea Agreement*.
- 3 16. On 12-22-2019, McDowell had not taken any steps to mitigate the risk of harm, such as
4 providing warnings to Alexandra about the dangers of Fentanyl. In fact, it is much worse, as
5 McDowell lied to Alexandra that the pills were Percocet/Oxycontin and withheld the truth
6 from her that the pills were Fentanyl. See, McDowell's *Plea Agreement*.
- 7 17. Upon going to bed the night of 12-22-2019, Alexandra ingested half of one of the pills. The
8 Fentanyl entered her system, poisoning her body, and caused her death. (Capeluto Dec)
- 9 18. McDowell intentionally, misrepresented the content of the pills he sold to Alexandra such that
10 she was not able to manage the quantity and nature of material she was about to ingest. That
11 same evening, Alexandra did, in fact, consume half of the pill she purchased from McDowell.
12 See, McDowell's *Plea Agreement*.
- 13 19. The following day, on or about 12-23-2019, Alexandra was found unresponsive by her
14 parents. She was ultimately pronounced dead with the cause of death being a lethal dose of
15 fentanyl, traced to the pills she purchased from McDowell on or about 12-22-2019. (Capeluto
16 Dec)
- 17 20. Alex's father, Matt Capelouto, has since become the preeminent spokesperson for this issue,
18 serves as president of the non-profit stopdrughomicide.org, and has worked tirelessly with
19 legislators attempting to pass Alexandra's Law which would require courts to issue a written
20 admonishment to defendants convicted of a range of fentanyl-related offenses, from
21 possessing for sale to sharing or transporting the drug. This would alert the defendant that
22 selling or giving away drugs could result in death, and that, if they do it again and somebody
23 dies as a result, they could be on the hook for murder. (Capeluto Dec)
- 24 21. After Alex's death, her mother, plaintiff Christine Capelouto, was diagnosed with stage 4
25 triple negative breast cancer, which has metastasized to her lungs. Her doctors attribute this
26 condition to the depression and stress she has felt since Alex's death. (Capelouto Dec)
- 27 22. The intentional and despicable acts of Brandon McDowell have utterly destroyed the
28 Capelouto's lives and have taken a tremendous toll on their family.

FEDERAL ARREST, GUILTY PLEA & INCARCERATION OF MCDOWELL

23. In *United States of America v. Brandon Michael McDowell*, aka “trvpkid_69,” #ED CR 21-238-JGB, on 7-11-2022, McDowell signed a *Plea Agreement*, with the United States Attorney’s Office for the Central District of California, where he pled guilty of the crime of Possession with Intent to Distribute Fentanyl, in violation of 21 USC §§ 841(a)(1)(b)(1)© [Doc-32].² See, McDowell’s *Plea Agreement*.

24. McDowell was prosecuted under a federal statute for Possession with Intent to Distribute Fentanyl. On July 1, 2022, McDowell pled guilty to the charges and is now in federal custody serving up to 9 years for Alex’s death. See, McDowell’s *Plea Agreement*.

25. McDowell’s *Plea Agreement* admitted that he: (1) knowingly and intentionally possessed fentanyl; (2) knowingly and intentionally distributed fentanyl; (3) knowingly and intentionally distributed fentanyl to Alexandra - the use of which resulted in her death by poisoning. McDowell also acknowledged that he will be required to pay full restitution to the victim(s) of the offense to which defendant is pleading guilty. See, McDowell’s *Plea Agreement*.

26. McDowell’s *Plea Agreement*, agreed that: any statements made by him, under oath, at the guilty plea hearing, and evidence derived from such statements, shall be admissible against him in any such action against him, and he waived and gave up any claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence derived from the statements should be suppressed or are inadmissible.³ See,

² 21 USC §§ 841(a)(1)(b)(1)(C) provides that any person who knowingly or intentionally distributes, or possesses with intent to distribute, a Schedule III, IV, or V controlled substance, as defined in the Controlled Substances Act, shall be punished by imprisonment for up to five years, a fine, or both.

³ A true and correct copy of McDowell’s 7-11-2022 *Plea Agreement* In *United States of America v. Brandon Michael McDowell*, aka “trvpkid_69,” # ED CR 21-238-JGB is attached hereto as Exhibit “1” and incorporated herein by this reference. Plaintiffs request Judicial Notice of same per Federal Rule of Evidence 201. Judicial notice may be taken of documents filed and orders or decisions entered in any federal or state court proceeding. *ReadyLink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d 754-756, n.1 (9th Cir. 2014) (holding that court properly took judicial notice of California state court proceedings); *Lozman v. City of Riviera Beach, Fla.*, 713 F.3d

McDowell's *Plea Agreement*.

THE STATE COURT CASE

27. On 11-30-2021, the Capeloutos sued McDowell in the Superior Court of the State of California, Riverside County, #CVSW219985 (the "State Court Case"), pursuant to the Drug Dealer Liability Act "DDLA" codified as Health and Safety Code sections 11700, et seq, for the wrongful death of Alexandra, who on 12-22-2019, McDowell illegally sold Percocet and/or Oxycontin pills (blue "Oxys" or "M30s") containing lethal doses of fentanyl, which caused her death.⁴ (Karwin Dec)

28. The Capeloutos sought \$4,000,000 in general damages plus \$1,000,000 in punitive damages - believing that this civil judgment would send a message to other fentanyl peddlers as to the value of the lives lost by their callous actions and prompt them to give up the trade, possibly saving other parents from experiencing this heartbreak. . (Karwin Dec)

29. Defendant McDowell was represented by counsel Matthew T. Ward in the State Court Case from the inception (11-30-2022) until such time as he withdrew as counsel (Ward was relieved as counsel by court order on 7-24-23). While Ward represented Defendant in the State Court Action, Ward: (1) stipulated to set aside default 6-2-2022; (2) answered the Complaint 6-21-2022; (3) posted jury fees 7-18-2022; (4) participated in the Case Management Statement 7-18-2022 and appeared at the CMC; (5) filed the Notice of Stay (due to the bankruptcy) 12-23-2022; & (6) filed a Motion to be Relieved as counsel 6-6-2023. (Karwin Dec)

THE STATE COURT CASE GETS STAYED TEMPORARILY BY THE DEBTOR'S CHAPTER 7 BANKRUPTCY

30. On 12-21-2022, McDowell filed a *Chapter 7 Voluntary Petition* Case # 6:22-bk-14752-MH [Main Case Doc-1]

1066, 1075, n.9 (11th Cir. 2013) (holding that court properly took judicial notice of documents from state court action to establish causes of action were identical to those raised in federal court).

⁴ A true and correct copy of the Capelouto's *State Court Complaint* # CVSW219985 is attached hereto as Exhibit "2" and incorporated herein by this reference. Plaintiffs request Judicial Notice of same per Federal Rule of Evidence 201.

31. On 1-24-2023, Matt & Christine Capeluoto filed a *Motion for Relief from Automatic Stay - Action in Non-bankruptcy Forum*, to allow the State Court Case to continue [Main Doc-11]. The hearing was set for 2-14-2023 at 11:00 AM [Main Case Doc-15].

32. On 2-15-2023, the Court entered its *Order Granting the Capeluoto's Motion for Relief from Automatic Stay Action in Non-bankruptcy Forum* [Main Case Doc-14]

RESUMPTION OF THE STATE COURT CASE LEADING TO JUDGMENT

33. On 11-15-2023, Defendant defaulted in the State Court Action. (Karwin Dec)

34. On 11-19-2023, Plaintiffs filed for *Default Judgment*, and filed a *Statement of the Case in Support of Request for Entry of Default Judgment*,⁵ as well as *Declaration of Matt Capelouto in Support of Request for Entry of Default Judgment*.⁶ (Karwin Dec)

35. On 12-19-2023, Plaintiffs obtained a \$5,025,735.00 judgment against McDowell, that provided: "*Defendant Brandon Michael McDowell's selling harmful narcotics such as fentanyl, particularly under the false premise that they were prescription painkillers, was both extreme and outrageous, was intentional, done without just cause or excuse, wilful and malicious, and was done with the specific intent to cause serious harm and injury to plaintiffs' decedent, Alexandra Capelouto, and/or was a categorically harmful activity, and that harm was substantially certain to occur as a result of his actions.*"⁷ (The "State Court Judgement") (Karwin Dec)

36. Plaintiffs' 2-19-2023 \$5,025,735.00 judgment against McDowell was broken down as follows: (1) \$4,000,000 in general damages; (2) \$1,000,000 in punitive damages; (3) \$25,000

⁵ A true and correct copy of Plaintiffs' 11-19-2023 *Statement of the Case in Support of Request for Entry of Default Judgment* is attached hereto as Exhibit "3" and incorporated herein by this reference. Plaintiffs request Judicial Notice of same per Federal Rule of Evidence 201.

⁶ A true and correct copy of Plaintiffs' 11-19-2023 *Declaration of Matt Capelouto in Support of Request for Entry of Default Judgment* is attached hereto as Exhibit "4" and incorporated herein by this reference. Plaintiffs request Judicial Notice of same per Federal Rule of Evidence 201.

⁷ A true and correct copy of the 12-21-2023 *State Court Judgment* by the Court for \$5,025,735.00 against McDowell, is attached hereto as Exhibit "5" and incorporated herein by this reference. Plaintiffs request Judicial Notice of same per Federal Rule of Evidence 201.

for funeral and burial expenses; & (4) \$735.00 in litigation costs = \$5,025,735.00. . (Karwin Dec)

37. To this day, Defendant has not appealed the fraud judgment or tried to set it aside. (Karwin Dec)

THIS ADVERSARY CASE FOR NONDISCHARGEABILITY OF DEBT

38. On 5-11-2023, Plaintiffs Matt Capelouto and Christine Capelouto timely filed the *Complaint for Nondischargeability of Debt Pursuant to 11 USC § 523(a)(6) & for Denial of Discharge Pursuant to 11 USC § 727(a)* (“Adversary Complaint”) against the Debtor/Defendant Brandon Michael McDowell, Adv. No. 6:23-ap-01041-MH [Adv Doc-1].⁸ The Debtor’s counsel was attorney Summer Shaw.

39. On 5-12-2023, the Court’s *Summons & Notice of Status Conference* (“Summons”) [ADV Doc-2-1] set 6-12-2023 as the Defendant’s deadline to respond to the Complaint.

40. On 5-12-2023, Plaintiffs filed and served the Complaint, Summons and Early Meeting of Counsel and Status Conference Instructions Effective February 17, 2012 on Defendant [ADV Doc-3].

41. On 6-13-2023, I gave Debtor’s counsel Summer Shaw a professional courtesy notice of Plaintiffs’ intentions to pursue a default against the Debtor/Defendant, pursuant to Section 15 of the State Bar’s enacted California Attorney Guidelines of Civility and Professionalism; *Shapell Social Rental Properties, LLC v. Chico’s FAS, Inc.*, (2019) 36 Cal.App.5th at 134,137, No. G060411, 2022 Cal. App. LEXIS 854 (Ct. App. Oct. 17, 2022); *Fasuyi v. Permatex, Inc.*, 84 Cal. Rptr. 3d 351 (Cal. Ct. App. 2008), quoting *Au-Yang v. Barton*, 90 Cal. Rptr. 2d 227 (1999)); *Lasalle v. Vogel*, 36 Cal. App. 5th 127, 248 Cal. Rptr. 3d 263 (2019); *Pearson v. Continental Airlines*, (1970) 11 Cal.3d 613, 619; Weil & Brown, Civil Procedure Before Trial (Rutter 2007) 5:68-5:70.

42. On 6-14-2023, the Debtor/Defendant filed a *Notice of Change of Address* [BK Doc-29] noting

⁸ A true and correct copy of the *Adversary Complaint* Adv. No. 6:23-ap-01041-MH is attached hereto as Exhibit “6” and incorporated herein by this reference. Plaintiffs request Judicial Notice of same per Federal Rule of Evidence 201.

- 1 that the Defendant is incarcerated at: Brandon Michael McDowell, Register No. 79243-509,
2 FCI Terminal Island, Federal Correctional Institution, PO Box 3007, San Pedro CA 90733.
- 3 43. On 6-14-2023, Plaintiffs filed a Request for Entry of Default Under Local Bankruptcy Rule
4 7055-1 [Adv Doc-4]
- 5 44. On 6-14-2023, the Court issued: Notice That a Default Has Not Been Entered by the Clerk
6 Against Defendant(s) Brandon Michael McDowell [Adv Doc-5].
- 7 45. On 6-16-2023, Plaintiffs filed a Request that the Clerk Issue Another Summons and Notice
8 of Status Conference (LBR 7004-1(a)(1)(B) [Adv Doc-8].
- 9 46. On 6-16-2023, the Court Clerk issued: another Summons Issued on Brandon Michael
10 McDowell setting the response date to the Complaint as 7-17-2023 [Adv Doc-9].
- 11 47. On 6-16-2023, Plaintiffs filed an *Amended Summons* Service Executed on Brandon Michael
12 McDowell [Adv Doc-10].⁹
- 13 48. On 6-26-2023, the Debtor's counsel filed a Motion to Withdraw as Attorney [BK Doc-30].
- 14 49. On 7-21-2023, the Court entered it's Order Granting Motion To Withdraw As Attorney [BK
15 Doc-34]
- 16 50. On 7-31-2023, Plaintiffs filed a *Request for Entry of Default* Under Local Bankruptcy Rule
17 7055-1 [Adv Doc-14]
- 18 51. On 7-31-2023, the Clerk entered *Default* against the Defendant McDowell [Adv Doc-15].
- 19 52. On 1-8-2024, Plaintiffs filed a *Motion for Summary Judgment* seeking judgment on their
20 nondischargeability claim [Adv Doc-20]. After a hearing held on 6-5-2024, the Court denied
21 Plaintiffs' Motion for Summary Judgment.
- 22 53. On 6-20-2024, Plaintiffs filed a *Motion for Default Judgment*. [Adv Doc-35], per Federal Rule
23 of Civil Procedure 55(b)(2).
- 24 54. On 8-28-2024, at the hearing on Plaintiffs' *Motion for Default Judgment*, the court found:

25
26 ⁹A true and correct copy of the *Proof of Service Of: Complaint for Nondischargeability of*
27 *Debt Pursuant to 11 USC § 523(a)(6) & for Denial of Discharge Pursuant to 11 USC § 727(a);*
28 *Summons Issued on Brandon Michael McDowell, aka "Trypkid_69; & Early Meeting of Counsel and*
Status Conference Instructions Effective February 17, 2012 - containing conformed copies of each -
[Adv Doc-10] - is attached hereto as Exhibit "7" and is incorporated herein by this reference.

As noted above, the Ninth Circuit has stated the following with regard to 11 U.S.C. § 523(a)(6):

Section 523(a)(6) of the Bankruptcy Code provides that an individual debtor may not discharge a debt for willful and malicious injury by the debtor to another entity or to the property of another entity. . . . A "willful" injury is a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. A "malicious" injury involves (1) a wrongful act, (2) done intentionally, . . . and (4) is done without just cause or excuse." In re Barboza, 545 F.3d 702, 706 (9th Cir. 2008).

To show that a debtor's conduct is willful requires proof that the debtor deliberately or intentionally injured the creditor, and that in doing so, the debtor intended the consequences of his act, not just the act itself. *Kawaauhau v. Geiger*, 523 U.S. 57, 60–61 (1998). The debtor must act with a subjective motive to inflict injury, or with a belief that injury is substantially certain to result from the conduct. In re Su, 290 F.3d at 1143. "The Debtor is charged with the knowledge of the natural consequences of his actions." In re Ormsby, 591 F.3d 1199, 1206 (9th Cir. 2010).

Here, Plaintiffs' motion for default judgment clearly articulates a wrongful act, done intentionally. The final element of maliciousness is also not at issue, because "just cause or excuse" is in the nature of an affirmative defense, not raised here. See, e.g., In re Rodriguez, 568 B.R. 328, 340 (Bankr. S.D. Cal. 2017).

The remaining issue is whether Defendant intended or was substantially certain that injury would occur or committed an act that necessarily causes injury. "Debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." In re Plyam, 530 B.R. 456, 463 (B.A.P. 9th Cir. 2015).

Here, the allegations in the motion for default judgment seem to, at best, reflect recklessness, rather than intentionality. Here, Plaintiffs have alleged that: (1) "ingestion of Fentanyl could cause death to Alexandra" (emphasis added) [Dkt. No. 35, Cohen Decl. ¶ 16]; (2) that McDowell knew They [the pills] contained Fentanyl or some other federally controlled substance [Dkt. No. 35, Cohen Decl. ¶ 13]; and (3) the "pill actually contained a lethal dose of the deadly opioid Fentanyl" [Dkt. No. 35, Cohen Decl. ¶ 11].

55. While the Plaintiffs have addressed the court's tentative conclusions, they understand the need to clearly demonstrate Defendant's intentionality. The court has permitted Plaintiffs to amend their *Motion for Default Judgment* to directly reference the record evidencing McDowell's intentional conduct.

SPECIFIC ALLEGATIONS IN THE ADVERSARY COMPLAINT OF DEFENDANT'S INTENTIONALITY

56. ¶11 of the Adversary Complaint alleged:

"The Capelouto's are informed and believe that McDowell sold 11 pills to Alexandra that he represented to be the pure Percocet/Oxycontin Alexandra requested, that he later described to law enforcement as blue "Oxys" or "M30s." However, the pills were not pure Percocet/Oxycontin. **Each pill actually contained a lethal dose of fentanyl.**"

57. It is Plaintiffs' position that this allegation in ¶11 establishes that McDowell's knowledge of the drug's actual content and its lethal potential demonstrates that he was fully aware of the risks to Alexandra.

58. ¶14 of the Adversary Complaint alleged:

"The Capelouto's are informed and believe that prior to 12-22-2029, McDowell knew that ingestion of Fentanyl was dangerous."

59. It is Plaintiffs' position that this allegation in ¶14 establishes that McDowell had prior knowledge of the dangers associated with fentanyl. Awareness of fentanyl's lethal risks shows that McDowell was not ignorant of the drug's potential harm. This knowledge forms the basis for demonstrating intentionality, as it demonstrates that McDowell was aware of the risk his actions posed but chose to proceed with selling the drug anyway.

60. ¶15 of the Adversary Complaint alleged:

"The Capelouto's are informed and believe that prior to 12-22-2029, McDowell knew that ingestion of Fentanyl could cause death in humans."

61. It is Plaintiffs' position that this allegation in ¶15 emphatically underscores McDowell's awareness of fentanyl's lethal properties. By acknowledging that he knew fentanyl could cause death, this allegation confirms that McDowell's actions went beyond mere recklessness; they were executed with the explicit understanding that they would lead to fatal consequences. This profound awareness highlights that McDowell's conduct was not just a matter of negligence but was a deliberate act with the certainty of causing death. The gravity of his knowledge underscores that the tragic death of Alexandra was not an unforeseeable outcome but a substantially certain result of his intentional actions. This critical insight solidifies the argument that McDowell's behavior was purposefully harmful, reinforcing the claim of intentionality with undeniable clarity and conviction..

62. ¶16 of the Adversary Complaint alleged:

"The Capelouto's are informed and believe that on 12-22-20219, McDowell knew that ingestion of Fentanyl could cause death to Alexandra."

63. It is Plaintiffs' position that this allegation in ¶16 directly links McDowell's understanding of fentanyl's lethal dangers to the tragic death of Alexandra. By establishing that McDowell

1 was fully aware of the deadly risks associated with fentanyl on the very day he sold the drugs
2 to her, this allegation underscores his awareness of the imminent danger to Alexandra's life.
3 This evidence reveals that McDowell's actions were not merely reckless but intentionally
4 targeted at her, demonstrating a deliberate and malevolent intent. The clear and present danger
5 he acknowledged—knowing that the ingestion of fentanyl could lead to Alexandra's
6 death—confirms that her fatal outcome was not just a possible consequence but substantially
7 certain. This targeted and calculated awareness reinforces the argument that McDowell's
8 conduct was intentional, purposeful and egregiously harmful.

9 64. The allegations in ¶¶11, 14, 15, and 16 collectively present a compelling case for McDowell's
10 intentionality. These allegations not only demonstrate McDowell's clear knowledge of
11 fentanyl's deadly nature but also his deliberate choice to distribute this fatal substance. This
12 pattern of behavior exposes a calculated and informed decision, directly linking his actions
13 to the harm inflicted upon Alexandra. This robust evidence substantiates the Plaintiffs'
14 argument that McDowell's conduct was intentional, rather than accidental or merely negligent.

15 65. Recognizing the Court's need for unequivocal evidence to substantiate McDowell's intent and
16 addressing the issues with previous allegations in the Adversary Complaint in ¶¶11, 14, 15,
17 and 16 that (ambiguously) suggested the selling of fentanyl "could" rather than "would" result
18 in Alexandra's death, Plaintiffs also acknowledge the Court's concerns about the disjunctive
19 and oscillating nature of ¶6 in the State Court Complaint, which alternated between
20 negligence, intent, "or" reckless disregard.¹⁰ To address these concerns with precision,

21
22 ¹⁰ The Court's concern regarding the disjunctive use of the word "or" in paragraph 6 of the
23 State Court Complaint stems from its broad application, which includes negligence, intent, and
24 reckless disregard. This broad range undermines the specific focus on intentionality, as it
25 encompasses less severe misconduct, such as negligence, which does not meet the stringent
26 requirements for intentional harm. The Court recognized that the disjunctive "or" introduces
27 ambiguity by suggesting that the defendant's conduct could fall under any of the listed
28 categories—negligence, intent, or reckless disregard. This ambiguity complicates the court's ability
to clearly establish intentionality, as it permits interpretation that the defendant's actions might have
been merely reckless or negligent, rather than intentionally harmful. Furthermore, the use of "or"
implies a consideration of different standards of conduct simultaneously. This overlap creates the
potential for the court to view the defendant's actions as falling into a spectrum of behavior, including
only reckless or negligent acts, rather than focusing exclusively on intentionality. To address this

1 Plaintiffs urge the Court to focus on ¶25 of the Adversary Complaint. This paragraph provides
2 unambiguous and definitive evidence of McDowell's deliberate intent to inflict harm on
3 Alexandra without the disjunctive word "or." It conclusively demonstrates McDowell's
4 malicious conduct and his specific intention to cause severe injury, eliminating any ambiguity
5 or room for misinterpretation. This clear and targeted allegation provides robust and
6 irrefutable support for the argument that McDowell's actions were intentional and aimed
7 directly at causing harm, reinforcing the case with undeniable strength, clarity, and conviction.

8 66. The strongest evidence of McDowell's intentionality is detailed in ¶25 of the Adversary
9 Complaint. This paragraph explicitly asserts that McDowell's selling fentanyl to Alexandria,
10 were not mere acts of negligence but were extreme, outrageous, and specifically intended to
11 cause serious harm to Alexandra. It unequivocally characterizes McDowell's conduct as
12 intentional and malicious, with a clear aim of inflicting significant injury to Alexandra. This
13 direct and precise language leaves no room for ambiguity or misinterpretation, demonstrating
14 that McDowell's actions were executed with the intent to cause substantial harm,
15 acknowledging that the resulting harm was a predictable and inevitable consequence of his
16 conduct.

17 67. ¶25 of the Adversary Complaint alleged:

18 *"The Capelouto's are informed and believe that McDowell's selling harmful narcotics*
19 *such as fentanyl, particularly under the false premise that they were prescription*
20 *painkillers, was both extreme and outrageous, were intentional, done without just*
21 *cause or excuse, wilful and malicious, and was done with the specific intent to cause*
serious harm and injury to Alexandra, and/or was a categorically harmful activity,
and that harm was substantially certain to occur as a result of his actions."

22 68. Upon default, the factual allegations of the complaint, except those relating to the amount of
23 damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th
24 Cir. 1987); see also *Almog v. Golden Summit Investors Group, Ltd.*, 2012 WL 12867972 at

25
26 issue, Plaintiffs must present allegations with precise, unequivocal language that unequivocally
27 highlights intentionality. This approach is essential to ensure that the court concentrates solely on
28 proving that the defendant's actions were deliberate and purposeful, thereby eliminating any
ambiguity created by the disjunctive "or" and reinforcing the argument that the defendant's conduct
was intentionally malicious.

*4 (C.D. Cal. 2012) ("When reviewing a motion for default judgment, the Court must accept the well-pleaded allegations of the complaint relating to liability as true.").

JUDGMENT INTEREST CALCULATION

69. Pursuant to by Bankruptcy Rule 3001(c)(2)(A), as of today's date, interest of 10% on the \$5,025,735.00 judgment, since 2-19-2023 (563 days at \$1,376.9137 interest per day) comes to \$775,202.41, bringing the total amount due at **\$5,800,937.41**.¹¹

RESTORING JUSTICE FOR ALEXANDRIA: HOLDING MCDOWELL ACCOUNTABLE FOR THE IRREPARABLE LOSS OF ALEXANDRA AND ENSURING HIS ACTIONS ARE NOT SHIELDED BY BANKRUPTCY

70. The Defendant's deliberate actions not only stole Alexandra's future but also robbed her parents of their beloved child. No monetary compensation can ever truly make up for this profound loss. It is crucial to hold McDowell accountable for his intentional and reprehensible conduct. His attempt to evade responsibility through bankruptcy must be thwarted.

71. While no legal remedy can fully mend the wounds from this tragic wrongful death, affirming the nondischargeability of this debt under 11 USC § 523(a)(6) will send a powerful message that McDowell's intentional cruelty will not go unpunished. This step will provide some measure of solace to the Capelouto family, reinforcing that such deliberate harm cannot be hidden behind bankruptcy protections.

72. The evidence substantiates the default judgment and the **\$5,800,937.41** awarded. Plaintiffs respectfully urge the court to grant their *Motion for Default Judgment* to ensure that McDowell's intentional actions are properly addressed and that justice for Alexandra is served.

I declare under penalty of perjury under the laws of the United States, State of California that the foregoing is true and correct.

Executed September 5, 2024, at Los Angeles, CA

By /s/ Baruch C. Cohen
Baruch C. Cohen

¹¹ <https://www.calculators.org/business/judgment.php>

DECLARATION OF MATT CAPELOUTO

I, Matt Capelouto, declare and state as follows:

1. The facts stated below are true and correct to the best of my personal knowledge and if called upon to testify to them, I could and would competently do so.
2. This Declaration is in support of the **PLAINTIFFS' AMENDED MOTION FOR DEFAULT JUDGMENT UNDER LBR 7055-1** filed by me and my wife Christine Capelouto vs. Brandon Michael McDowell, aka "trvpkid_69" 6:23-ap-01041-MH.
3. My wife, Christine Capelouto, and I are the biological parents of Alexandra Capelouto.
4. Alexandra was born February 24, 1999.
5. In December of 2019, she was in her sophomore year Arizona State University, with a major in Sociology. Attached hereto as Exhibit 1 is a photo of myself with Alex in her ASU dorm.
6. After graduation, her plan was to become a social worker so that she could help others.
7. On December 22, 2019, she was staying at our family home for her winter break from school. She was 20 years old.
8. Alexandra went on Snapchat and contacted an individual named Brandon McDowell in order to purchase the painkiller ..Percocet.. from McDowell. McDowell agreed to sell Percocet pills to Alexandra. He drove to my house and sold Alexandra some pills.
9. The pills were not Percocet as Alexandra thought. They were counterfeit pills manufactured with the deadly opioid fentanyl.
10. That evening, Alexandra ingested half of one of the pills. The fentanyl in the pill was a deadly dose. She died that evening as a result of the fentanyl poisoning.
11. Brandon McDowell was charged in federal court with a violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(c) .. Possession with Intent to Distribute Fentanyl.
12. On July 1, 2022, McDowell pled guilty to the charges and was sentenced to 8 years in federal prison.¹²

¹² A true and correct copy of McDowell's 7-11-2022 *Plea Agreement In United States of America v. Brandon Michael McDowell*, aka "trvpkid_69" # ED CR 21-238-JGB is attached hereto as Exhibit "1" and incorporated herein by this reference.

13. As part of the plea, McDowell specifically admits that knowingly intended to sell fentanyl to our daughter. (See Exhibit 1 .. 6:11-7:23).

14. I will never say my daughter died of a drug overdose. She was deceived to death.

15. Since Alexandra's death, my wife and I have dedicated our lives to prevent other parents from experiencing the absolute devastation and anguish that comes with losing a child this way.

16. I serve as president of the non-profit Stopdrughomicide.org and have worked tirelessly with legislators attempting to pass Alexandra's Law would require courts to issue a written admonishment to defendants convicted of a range of fentanyl-related offenses, from possessing for sale to sharing or transporting the drug. This would alert the defendant that selling or giving away drugs could result in death, and that, if they do it again and somebody dies as a result, they could be on the hook for murder.

17. In March of 2022, my wife, Christine, was diagnosed with stage 4 triple negative breast cancer, which has metastasized to her lungs. I have no doubt that the grief of losing our daughter caused stress and strain on her body that brought on the cancer. I am now facing the possibility of losing my wife as a direct result of the death of our daughter. Attached hereto as Exhibit 8, is a photo of Christine with Alex. Their smiles reflect the bond they shared.

18. The intentional and despicable acts of Brandon McDowell have utterly destroyed our lives and have taken a tremendous toll on our family.

19. Alex's three siblings, Skye (age 22) and Brooke (age 32) and Brittany (age 33) have also been permanently impacted by this profound loss to our family. Exhibit 9, attached hereto, is a photo of Alex with her sisters.

20. If there is anything I would wish for today, it would be to hear Alexandra's voice. Since the day she was born, the sound of her voice filled our hearts and lives with love and hope.

21. Exhibit 10 attached hereto is the last photo Christine and I have, together, with Alex.

22. Counterfeit pills manufactured with Fentanyl in place of the expected ingredients pose one of the faster growing dangers facing our society. In our case, McDowell engaged in that crime knowingly and intentionally. Because of his callous disregard we will miss out on attending Alexandra's graduation and sharing the milestones of our lives together.

1 23. We are seeking an award that will reflect our loss while, at the same time, sends a message
2 to others who engage in this nefarious activity.

3 24. Based on the foregoing, my wife Christine and I seek a joint award of \$5,800,937.41 against
4 Brandon McDowell for his intentional acts that took our beloved Alex from us.

5
6 I declare under penalty of perjury under the laws of the United States, and State of California
7 that the foregoing is true and correct.

8 Executed September 5, 2024, at Temecula, CA

9 By /s/ Matt Capelouto
10 Matt Capelouto
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DECLARATION OF ROBERT P. KARWIN, ESQ

I, ROBERT P. KARWIN, declare as follows:

1. The facts stated below are true and correct within the best of my personal knowledge and if called upon to testify to them I could and would competently do so.
2. I am the an attorney in good standing with the State Bar of California and am attorney of record for the plaintiffs in the State Court Action.
3. This declaration is in support of **PLAINTIFFS' AMENDED MOTION FOR DEFAULT JUDGMENT UNDER LBR 7055-1**
4. In *United States of America v. Brandon Michael McDowell*, aka "trvpkid_69" #ED CR 21-238-JGB, on 7-11-2022, McDowell signed a *Plea Agreement*, with the United States Attorney's Office for the Central District of California, where he pled guilty of the crime of Possession with Intent to Distribute Fentanyl, in violation of 21 USC §§ 841(a)(1)(b)(1)© [Doc-32].^{13 14}
5. On 11-30-2021, the Capeloutos sued McDowell in the Superior Court of the State of California, Riverside County, # CVSW219985 (the "State Court Case"), pursuant to the Drug Dealer Liability Act "DDLA" codified as Health and Safety Code sections 11700, et seq, for the wrongful death of Alexandra, who on 12-22-2019, McDowell illegally sold Percocet and/or Oxycontin pills (blue "Oxys" or "M30s") containing lethal doses of fentanyl, which caused her death.¹⁵
6. The Capeloutos sought \$4,000,000 in general damages plus \$1,000,000 in punitive

¹³ 21 USC §§ 841(a)(1)(b)(1)(C) provides that any person who knowingly or intentionally distributes, or possesses with intent to distribute, a Schedule III, IV, or V controlled substance, as defined in the Controlled Substances Act, shall be punished by imprisonment for up to five years, a fine, or both.

¹⁴ A true and correct copy of McDowell's 7-11-2022 *Plea Agreement* In *United States of America v. Brandon Michael McDowell*, aka "trvpkid_69" # ED CR 21-238-JGB is attached hereto as Exhibit "1" and incorporated herein by this reference.

¹⁵ A true and correct copy of the Capelouto's State Court Complaint # CVSW219985 is attached hereto as Exhibit "2" and incorporated herein by this reference.

1 damages - believing that this civil judgment would send a message to other fentanyl
2 peddlers as to the value of the lives lost by their callous actions and prompt them to give
3 up the trade, possibly saving other parents from experiencing this heartbreak.

4 7. Defendant McDowell was represented by counsel Matthew T. Ward in the State Court
5 Case from the inception (11-30-2022) until such time as he withdrew as counsel (Ward
6 was relieved as counsel by court order on 7-24-23). While Ward represented Defendant in
7 the State Court Action, Ward: (1) stipulated to set aside default 6-2-2022; (2) answered the
8 Complaint 6-21-2022; (3) posted jury fees 7-18-2022; (4) participated in the Case
9 Management Statement 7-18-2022 and appeared at the CMC; (5) filed the Notice of Stay
10 (due to the bankruptcy) 12-23-2022; & (6) filed a Motion to be Relieved as counsel 6-6-
11 2023.

12 8. On 11-15-2023, Defendant defaulted in the State Court Action.

13 9. On 11-19-2023, Plaintiffs filed for Default Judgment, and filed a *Statement of the Case in*
14 *Support of Request for Entry of Default Judgment*,¹⁶ as well as *Declaration of Matt*
15 *Capelouto in Support of Request for Entry of Default Judgment*.¹⁷

16 10. On 12-19-2023, Plaintiffs obtained a \$5,025,735.00 judgment against McDowell, that
17 provided: “*Defendant Brandon Michael McDowell’s selling harmful narcotics such as*
18 *fentanyl, particularly under the false premise that they were prescription painkillers, was*
19 *both extreme and outrageous, was intentional, done without just cause or excuse, wilful*
20 *and malicious, and was done with the specific intent to cause serious harm and injury to*
21 *plaintiffs’ decedent, Alexandra Capelouto, and/or was a categorically harmful activity, and*

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23
24
25 ¹⁶ A true and correct copy of Plaintiffs’ 11-19-2023 *Statement of the Case in Support of*
26 *Request for Entry of Default Judgment* is attached hereto as Exhibit “3” and incorporated herein by
this reference.

27 ¹⁷ A true and correct copy of Plaintiffs’ 11-19-2023 *Declaration of Matt Capelouto in Support*
28 *of Request for Entry of Default Judgment* is attached hereto as Exhibit “4” and incorporated herein
by this reference.

1 *that harm was substantially certain to occur as a result of his actions.”*¹⁸ (The “State Court
2 Judgement”)

3 11. Plaintiffs’ 2-19-2023 \$5,025,735.00 judgment against McDowell was broken down as
4 follows: (1) \$4,000,000 in general damages; (2) \$1,000,000 in punitive damages; (3)
5 \$25,000 for funeral and burial expenses; & (4) \$735.00 in litigation costs = \$5,025,735.00.

6
7 12. To this day, Defendant has not appealed the fraud judgment or tried to set it aside.

8 13. Pursuant to by Bankruptcy Rule 3001(c)(2)(A), as of today’s date, interest of 10% on the
9 \$5,025,735.00 judgment, since 2-19-2023 (563 days at \$1,376.9137 interest per day)
10 comes to \$775,202.41, bringing the total amount due at **\$5,800,937.41**.¹⁹

11 I declare under penalty of perjury under the laws of the United States and the State of
12 California that the foregoing is true and correct.

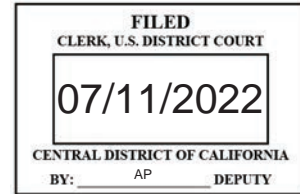
13 DATED: September 5, 2024

14 By /s/ Robert P. Karwin
15 Robert P. Karwin, Esq.
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26 ¹⁸ A true and correct copy of the 12-21-2023 State Court Judgment by the Court for
27 \$5,025,735.00 against McDowell, is attached hereto as Exhibit “5” and incorporated herein by this
28 reference.

¹⁹ <https://www.calculators.org/business/judgment.php>

EXHIBIT “1”



TRACY L. WILKISON
United States Attorney
SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division
STEPHEN T. MERRILL (Cal. Bar No. 255827)
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Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRANDON MICHAEL MCDOWELL,
aka "trvpkid_69,"

Defendant.

No. ED CR 21-238-JGB

PLEA AGREEMENT FOR DEFENDANT
BRANDON MICHAEL MCDOWELL

1. This constitutes the plea agreement between Brandon Michael McDowell ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") in the above-captioned case. This agreement is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities.

DEFENDANT'S OBLIGATIONS

2. Defendant agrees to:

1 a. Give up the right to indictment by a grand jury and,
2 at the earliest opportunity requested by the USAO and provided by the
3 Court, appear and plead guilty to a one-count information in the form
4 attached to this agreement as Exhibit A or a substantially similar
5 form, which charges defendant with Possession with Intent to
6 Distribute Fentanyl in violation of 21 U.S.C. §§ 841(a)(1),
7 (b)(1)(C).

8 b. Not contest facts agreed to in this agreement.

9 c. Abide by all agreements regarding sentencing contained
10 in this agreement.

11 d. Appear for all court appearances, surrender as ordered
12 for service of sentence, obey all conditions of any bond, and obey
13 any other ongoing court order in this matter.

14 e. Not commit any crime; however, offenses that would be
15 excluded for sentencing purposes under United States Sentencing
16 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
17 within the scope of this agreement.

18 f. Be truthful at all times with the United States
19 Probation and Pretrial Services Office and the Court.

20 g. Pay the applicable special assessment at or before the
21 time of sentencing unless defendant has demonstrated a lack of
22 ability to pay such assessments.

23 h. Defendant agrees that any and all criminal debt
24 ordered by the Court will be due in full and immediately. The
25 government is not precluded from pursuing, in excess of any payment
26 schedule set by the Court, any and all available remedies by which to
27 satisfy defendant's payment of the full financial obligation,
28 including referral to the Treasury Offset Program.

1 i. Complete the Financial Disclosure Statement on a form
2 provided by the USAO and, within 30 days of defendant's entry of a
3 guilty plea, deliver the signed and dated statement, along with all
4 of the documents requested therein, to the USAO by either email at
5 usacac.FinLit@usdoj.gov (preferred) or mail to the USAO Financial
6 Litigation Section at 300 North Los Angeles Street, Suite 7516, Los
7 Angeles, CA 90012. Defendant agrees that defendant's ability to pay
8 criminal debt shall be assessed based on the completed Financial
9 Disclosure Statement and all required supporting documents, as well
10 as other relevant information relating to ability to pay.

11 j. Authorize the USAO to obtain a credit report upon
12 returning a signed copy of this plea agreement.

13 k. Consent to the USAO inspecting and copying all of
14 defendant's financial documents and financial information held by the
15 United States Probation and Pretrial Services Office.

16 THE USAO'S OBLIGATIONS

17 3. The USAO agrees to:

18 a. Not contest facts agreed to in this agreement.

19 b. Abide by all agreements regarding sentencing contained
20 in this agreement.

21 c. At the time of sentencing, move to dismiss the
22 underlying indictment as against defendant. Defendant agrees,
23 however, that at the time of sentencing the Court may consider any
24 dismissed charges in determining the applicable Sentencing Guidelines
25 range, the propriety and extent of any departure from that range, and
26 the sentence to be imposed.

27 d. At the time of sentencing, provided that defendant
28 demonstrates an acceptance of responsibility for the offense up to

1 and including the time of sentencing, recommend a two-level reduction
2 in the applicable Sentencing Guidelines offense level, pursuant to
3 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
4 additional one-level reduction if available under that section.

5 NATURE OF THE OFFENSE

6 4. Defendant understands that for defendant to be guilty of
7 the crime charged in the superseding information, that is, Possession
8 with Intent to Distribute Fentanyl, in violation of Title 21, United
9 States Code, Sections 841(a)(1), (b)(1)(C), the following must be
10 true:

- 11 a. First, defendant knowingly possessed fentanyl;
12 b. Second, defendant knew that it was fentanyl or some
13 other federally controlled substance; and
14 c. Third, defendant intended to distribute it to another
15 person.

16 PENALTIES AND RESTITUTION

17 5. Defendant understands that the statutory maximum sentence
18 that the Court can impose for a violation of Title 21, United States
19 Code, Sections 841(a)(1), (b)(1)(C), is: 20 years' imprisonment; a
20 lifetime period of supervised release; a fine of \$1,000,000 or twice
21 the gross gain or gross loss resulting from the offense, whichever is
22 greatest; and a mandatory special assessment of \$100.

23 6. Defendant understands that the statutory mandatory minimum
24 sentence that the Court must impose for a violation of 21 U.S.C.
25 §§ 841(a)(1), (b)(1)(C), is: a 3-year period of supervised release in
26 addition to any term of imprisonment, and a mandatory special
27 assessment of \$100.

1 7. Defendant understands that defendant will be required to
2 pay full restitution to the victim(s) of the offense to which
3 defendant is pleading guilty. Defendant agrees that, in return for
4 the USAO's compliance with its obligations under this agreement, the
5 Court may order restitution to persons other than the victim(s) of
6 the offense to which defendant is pleading guilty and in amounts
7 greater than those alleged in the count to which defendant is
8 pleading guilty. In particular, defendant agrees that the Court may
9 order restitution to any victim of any of the following for any
10 losses suffered by that victim as a result: (a) any relevant conduct,
11 as defined in U.S.S.G. § 1B1.3, in connection with the offense to
12 which defendant is pleading guilty; and (b) any counts dismissed
13 pursuant to this agreement as well as all relevant conduct, as
14 defined in U.S.S.G. § 1B1.3, in connection with those counts.

15 8. Defendant understands that supervised release is a period
16 of time following imprisonment during which defendant will be subject
17 to various restrictions and requirements. Defendant understands that
18 if defendant violates one or more of the conditions of any supervised
19 release imposed, defendant may be returned to prison for all or part
20 of the term of supervised release authorized by statute for the
21 offense that resulted in the term of supervised release, which could
22 result in defendant serving a total term of imprisonment greater than
23 the statutory maximum stated above.

24 9. Defendant understands that, by pleading guilty, defendant
25 may be giving up valuable government benefits and valuable civic
26 rights, such as the right to vote, the right to possess a firearm,
27 the right to hold office, and the right to serve on a jury. Defendant
28 understands that he is pleading guilty to a felony and that it is a

1 federal crime for a convicted felon to possess a firearm or
2 ammunition. Defendant understands that the conviction in this case
3 may also subject defendant to various other collateral consequences,
4 including but not limited to revocation of probation, parole, or
5 supervised release in another case and suspension or revocation of a
6 professional license. Defendant understands that unanticipated
7 collateral consequences will not serve as grounds to withdraw
8 defendant's guilty plea.

9 10. Defendant and his counsel have discussed the fact that, and
10 defendant understands that, if defendant is not a United States
11 citizen, the conviction in this case makes it practically inevitable
12 and a virtual certainty that defendant will be removed or deported
13 from the United States. Defendant may also be denied United States
14 citizenship and admission to the United States in the future.
15 Defendant understands that while there may be arguments that
16 defendant can raise in immigration proceedings to avoid or delay
17 removal, removal is presumptively mandatory and a virtual certainty
18 in this case. Defendant further understands that removal and
19 immigration consequences are the subject of a separate proceeding and
20 that no one, including his attorney or the Court, can predict to an
21 absolute certainty the effect of his conviction on his immigration
22 status. Defendant nevertheless affirms that he wants to plead guilty
23 regardless of any immigration consequences that his plea may entail,
24 even if the consequence is automatic removal from the United States.

25 FACTUAL BASIS

26 11. Defendant admits that defendant is, in fact, guilty of the
27 offense to which defendant is agreeing to plead guilty. Defendant
28 and the USAO agree to the statement of facts provided below and agree

1 that this statement of facts is sufficient to support a plea of
2 guilty to the charge described in this agreement and to establish the
3 Sentencing Guidelines factors set forth in paragraph 13 below but is
4 not meant to be a complete recitation of all facts relevant to the
5 underlying criminal conduct or all facts known to either party that
6 relate to that conduct.

7 On December 22, 2019, in Riverside County within the Central
8 District of California, defendant possessed fentanyl with intent to
9 distribute it to another. He in fact distributed the fentanyl to
10 Alexandra Capelouto, the use of which resulted in Alexandra's death
11 on or about December 23, 2019.

12 Specifically, on the night of December 22, 2019, Alexandra
13 Capelouto asked defendant if he could sell her Percocet pills, a
14 prescription painkiller. Defendant agreed to sell Alexandra Percocet
15 pills. Defendant drove to Alexandra's home in Temecula, California,
16 and sold her what turned out to be approximately 11 counterfeit
17 oxycodone pills that he later described to law enforcement as blue
18 "Oxys" or "M30s." Defendant knew it was illegal for him to sell the
19 pills and that they contained fentanyl or some other federally
20 controlled substance. Upon going to bed the night of December 22,
21 2019, Alexandra Capelouto ingested half of one of the pills. The
22 fentanyl entered her system, poisoning her body, and caused her
23 death.

24 SENTENCING FACTORS

25 12. Defendant understands that in determining defendant's
26 sentence the Court is required to calculate the applicable Sentencing
27 Guidelines range and to consider that range, possible departures
28 under the Sentencing Guidelines, and the other sentencing factors set

1 forth in 18 U.S.C. § 3553(a). Defendant understands that the
2 Sentencing Guidelines are advisory only, that defendant cannot have
3 any expectation of receiving a sentence within the calculated
4 Sentencing Guidelines range, and that after considering the
5 Sentencing Guidelines and the other § 3553(a) factors, the Court will
6 be free to exercise its discretion to impose any sentence it finds
7 appropriate up to the maximum set by statute for the crime of
8 conviction.

9 13. Defendant and the USAO agree to the following applicable
10 Sentencing Guidelines factors:

11 Base Offense Level: 38 U.S.S.G. § 2D1.1(a)(2)
12 Defendant and the USAO reserve the right to argue that additional
13 specific offense characteristics, adjustments, and departures under
14 the Sentencing Guidelines are appropriate.

15 14. Pursuant to U.S.S.G. §§ 1B1.2(a) and (c), the parties
16 stipulate that the defendant committed a separate violation of 21
17 U.S.C. § 841(b)(1)(C) (distribution of controlled substances
18 resulting in death), in that, on or about December 22, 2019, the
19 defendant knowingly and intentionally distributed fentanyl, the use
20 of which resulted in the death of A.C., and that such overdose death
21 resulting from the defendant's distribution of fentanyl constitutes a
22 more serious offense than the offense of conviction for purposes of
23 calculating the applicable Sentencing Guidelines offense level.
24 Accordingly, pursuant to U.S.S.G. §§ 2D1.1(a)(2), 1B1.2(a) and
25 1B1.2(c), the parties stipulate that the Court should calculate the
26 Sentencing Guidelines as if defendant had been convicted of the
27 offense described in this paragraph and apply a base offense level
28 38. The parties further stipulate that application of such a base

1 offense level, which is greater than the base offense level that
2 would otherwise apply, is independently supported by U.S.S.G. §
3 5K2.1. Defendant will not recommend, argue, or otherwise suggest
4 that the court impose a base offense level other than 38.

5 15. Defendant understands that there is no agreement as to
6 defendant's criminal history or criminal history category.

7 16. Defendant and the USAO reserve the right to argue for a
8 sentence outside the sentencing range established by the Sentencing
9 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
10 (a)(2), (a)(3), (a)(6), and (a)(7).

11 WAIVER OF CONSTITUTIONAL RIGHTS

12 17. Defendant understands that by pleading guilty, defendant
13 gives up the following rights:

14 a. The right to persist in a plea of not guilty.

15 b. The right to a speedy and public trial by jury.

16 c. The right to be represented by counsel -- and if
17 necessary have the Court appoint counsel -- at trial. Defendant
18 understands, however, that, defendant retains the right to be
19 represented by counsel -- and if necessary have the Court appoint
20 counsel -- at every other stage of the proceeding.

21 d. The right to be presumed innocent and to have the
22 burden of proof placed on the government to prove defendant guilty
23 beyond a reasonable doubt.

24 e. The right to confront and cross-examine witnesses
25 against defendant.

26 f. The right to testify and to present evidence in
27 opposition to the charges, including the right to compel the
28 attendance of witnesses to testify.

1 g. The right not to be compelled to testify, and, if
2 defendant chose not to testify or present evidence, to have that
3 choice not be used against defendant.

4 h. Any and all rights to pursue any affirmative defenses,
5 Fourth Amendment or Fifth Amendment claims, and other pretrial
6 motions that have been filed or could be filed.

7 WAIVER OF APPEAL OF CONVICTION

8 18. Defendant understands that, with the exception of an appeal
9 based on a claim that defendant's guilty plea was involuntary, by
10 pleading guilty defendant is waiving and giving up any right to
11 appeal defendant's conviction on the offense to which defendant is
12 pleading guilty. Defendant understands that this waiver includes,
13 but is not limited to, arguments that the statute to which defendant
14 is pleading guilty is unconstitutional, and any and all claims that
15 the statement of facts provided herein is insufficient to support
16 defendant's plea of guilty.

17 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

18 19. Defendant agrees that, provided the Court imposes a total
19 term of imprisonment on all counts of conviction of no more than 210
20 months, defendant gives up the right to appeal all of the following:
21 (a) the procedures and calculations used to determine and impose any
22 portion of the sentence; (b) the term of imprisonment imposed by the
23 Court; (c) the fine imposed by the Court, provided it is within the
24 statutory maximum; (d) to the extent permitted by law, the
25 constitutionality or legality of defendant's sentence, provided it is
26 within the statutory maximum; (f) the term of probation or supervised
27 release imposed by the Court, provided it is within the statutory
28 maximum; and (g) any of the following conditions of probation or

1 supervised release imposed by the Court: the conditions set forth in
2 Second Amended General Order 20-04 of this Court; the drug testing
3 conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the
4 alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

5 20. The USAO agrees that, provided (a) all portions of the
6 sentence are at or below the statutory maximum specified above and
7 (b) the Court imposes a term of imprisonment of no less than 168
8 months, the USAO gives up its right to appeal any portion of the
9 sentence.

10 RESULT OF WITHDRAWAL OF GUILTY PLEA

11 21. Defendant agrees that if, after entering a guilty plea
12 pursuant to this agreement, defendant seeks to withdraw and succeeds
13 in withdrawing defendant's guilty plea on any basis other than a
14 claim and finding that entry into this plea agreement was
15 involuntary, then (a) the USAO will be relieved of all of its
16 obligations under this agreement; and (b) should the USAO choose to
17 pursue any charge that was either dismissed or not filed as a result
18 of this agreement, then (i) any applicable statute of limitations
19 will be tolled between the date of defendant's signing of this
20 agreement and the filing commencing any such action; and
21 (ii) defendant waives and gives up all defenses based on the statute
22 of limitations, any claim of pre-indictment delay, or any speedy
23 trial claim with respect to any such action, except to the extent
24 that such defenses existed as of the date of defendant's signing this
25 agreement.

EFFECTIVE DATE OF AGREEMENT

22. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

BREACH OF AGREEMENT

23. Defendant agrees that if defendant, at any time after the signature of this agreement and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's obligations are material, a single breach of this agreement is sufficient for the USAO to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the USAO in writing. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, then: (a) if defendant has previously entered a guilty plea pursuant to this agreement, defendant will not be able to withdraw the guilty plea, and (b) the USAO will be relieved of all its obligations under this agreement.

24. Following the Court's finding of a knowing breach of this agreement by defendant, should the USAO choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then:

a. Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the filing commencing any such action.

b. Defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any

1 speedy trial claim with respect to any such action, except to the
2 extent that such defenses existed as of the date of defendant's
3 signing this agreement.

4 c. Defendant agrees that: (i) any statements made by
5 defendant, under oath, at the guilty plea hearing (if such a hearing
6 occurred prior to the breach); (ii) the agreed to factual basis
7 statement in this agreement; and (iii) any evidence derived from such
8 statements, shall be admissible against defendant in any such action
9 against defendant, and defendant waives and gives up any claim under
10 the United States Constitution, any statute, Rule 410 of the Federal
11 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
12 Procedure, or any other federal rule, that the statements or any
13 evidence derived from the statements should be suppressed or are
14 inadmissible.

15 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

16 OFFICE NOT PARTIES

17 25. Defendant understands that the Court and the United States
18 Probation and Pretrial Services Office are not parties to this
19 agreement and need not accept any of the USAO's sentencing
20 recommendations or the parties' agreements to facts or sentencing
21 factors.

22 26. Defendant understands that both defendant and the USAO are
23 free to: (a) supplement the facts by supplying relevant information
24 to the United States Probation and Pretrial Services Office and the
25 Court, (b) correct any and all factual misstatements relating to the
26 Court's Sentencing Guidelines calculations and determination of
27 sentence, and (c) argue on appeal and collateral review that the
28 Court's Sentencing Guidelines calculations and the sentence it

1 chooses to impose are not error, although each party agrees to
2 maintain its view that the calculations in paragraph 13 are
3 consistent with the facts of this case. While this paragraph permits
4 both the USAO and defendant to submit full and complete factual
5 information to the United States Probation and Pretrial Services
6 Office and the Court, even if that factual information may be viewed
7 as inconsistent with the facts agreed to in this agreement, this
8 paragraph does not affect defendant's and the USAO's obligations not
9 to contest the facts agreed to in this agreement.

10 27. Defendant understands that even if the Court ignores any
11 sentencing recommendation, finds facts or reaches conclusions
12 different from those agreed to, and/or imposes any sentence up to the
13 maximum established by statute, defendant cannot, for that reason,
14 withdraw defendant's guilty plea, and defendant will remain bound to
15 fulfill all defendant's obligations under this agreement. Defendant
16 understands that no one -- not the prosecutor, defendant's attorney,
17 or the Court -- can make a binding prediction or promise regarding
18 the sentence defendant will receive, except that it will be within
19 the statutory maximum.

20 NO ADDITIONAL AGREEMENTS

21 28. Defendant understands that, except as set forth herein,
22 there are no promises, understandings, or agreements between the USAO
23 and defendant or defendant's attorney, and that no additional
24 promise, understanding, or agreement may be entered into unless in a
25 writing signed by all parties or on the record in court.

26 ///

27 ///

1 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

2 29. The parties agree that this agreement will be considered
3 part of the record of defendant's guilty plea hearing as if the
4 entire agreement had been read into the record of the proceeding.

5 AGREED AND ACCEPTED

6 UNITED STATES ATTORNEY'S OFFICE
7 FOR THE CENTRAL DISTRICT OF
8 CALIFORNIA

9 TRACY L. WILKISON
United States Attorney



7/8/2022

10 STEPHEN T. MERRILL
11 Special Assistant U.S. Attorney
12 JOHN A. BALLA
Assistant United States Attorney

Date

13
14 

15 BRANDON MICHAEL MCDOWELL
16 Defendant

7/11/22

Date

17
18 

19 ANDREW BYRD
Deputy Federal Public Defender
20 Attorney for Defendant
BRANDON MICHAEL MCDOWELL

7/1/22

Date

21
22 CERTIFICATION OF DEFENDANT

23 I have read this agreement in its entirety. I have had enough
24 time to review and consider this agreement, and I have carefully and
25 thoroughly discussed every part of it with my attorney. I understand
26 the terms of this agreement, and I voluntarily agree to those terms.
27 I have discussed the evidence with my attorney, and my attorney has
28 advised me of my rights, of possible pretrial motions that might be

1 filed, of possible defenses that might be asserted either prior to or
2 at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a),
3 of relevant Sentencing Guidelines provisions, and of the consequences
4 of entering into this agreement. No promises, inducements, or
5 representations of any kind have been made to me other than those
6 contained in this agreement. No one has threatened or forced me in
7 any way to enter into this agreement. I am satisfied with the
8 representation of my attorney in this matter, and I am pleading
9 guilty because I am guilty of the charge and wish to take advantage
10 of the promises set forth in this agreement, and not for any other
11 reason.

12 
13 _____
14 BRANDON MICHAEL MCDOWELL
15 Defendant


7/1/22

Date

16 CERTIFICATION OF DEFENDANT'S ATTORNEY

17 I am Brandon Michael McDowell's attorney. I have carefully and
18 thoroughly discussed every part of this agreement with my client.
19 Further, I have fully advised my client of his rights, of possible
20 pretrial motions that might be filed, of possible defenses that might
21 be asserted either prior to or at trial, of the sentencing factors
22 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
23 provisions, and of the consequences of entering into this agreement.
24 To my knowledge: no promises, inducements, or representations of any
25 kind have been made to my client other than those contained in this
26 agreement; no one has threatened or forced my client in any way to
27 enter into this agreement; my client's decision to enter into this
28 agreement is an informed and voluntary one; and the factual basis set

1 forth in this agreement is sufficient to support my client's entry of
2 a guilty plea pursuant to this agreement.

3
4  for
ANDREW BYRD
Deputy Federal Public Defender
Attorney for Defendant
BRANDON MICHAEL MCDOWELL

7/1/22
Date

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRANDON MICHAEL MCDOWELL,
aka "trvpkid_69,"

Defendant.

ED CR No. 21-238(A)-JGB

S U P E R S E D I N G
I N F O R M A T I O N

[21 U.S.C. §§ 841(a)(1),
(b)(1)(C): Possession with Intent
to Distribute Fentanyl]

The United States Attorney charges:

[21 U.S.C. §§ 841(a)(1), (b)(1)(C)]

On or about December 22, 2019, in Riverside County, within the
Central District of California, defendant BRANDON MICHAEL MCDOWELL,
also known as "trvpkid_69," knowingly and intentionally possessed

///

///

1 with intent to distribute fentanyl, a Schedule II narcotic drug
2 controlled substance.

3
4 TRACY L. WILKISON
5 United States Attorney

6
7 SCOTT M. GARRINGER
8 Assistant United States Attorney
9 Chief, Criminal Division

10 JERRY C. YANG
11 Assistant United States Attorney
12 Chief, Riverside Branch Office

13 STEPHEN T. MERILL
14 Special Assistant U.S. Attorney
15 JOHN A. BALLA
16 Assistant United States Attorney
17 Riverside Branch Office
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, Stephanie Ascencio, declare:

That I am a citizen of the United States and a resident of or employed in Riverside County, California; that my business address is the Office of United States Attorney, 3403 Tenth Street, Suite 200, Riverside, California 92501; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of: **PLEA AGREEMENT FOR DEFENDANT**

BRANDON MICHAEL MCDOWELL

- | | |
|--|---|
| <input type="checkbox"/> Placed in a closed envelope for collection and inter-office delivery, addressed as follows: | <input type="checkbox"/> Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows: |
| <input type="checkbox"/> By hand delivery, addressed as follows: | <input checked="" type="checkbox"/> By email delivery, as follows:
<u>SEE ATTACHED</u> |
| <input type="checkbox"/> By messenger, as follows: | <input type="checkbox"/> By Federal Express, as follows: |

This Certificate is executed on **July 11, 2022**, in Riverside, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/ *Stephanie Ascencio*
Stephanie Ascencio
Legal Assistant

ATTACHMENT

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Riverside, CA 92501
andrew_byrd@fd.org

Young J. Kim - DFPD
Federal Public Defenders Office
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MELODY A. TRUJILLO – SBN 165218

Attorneys for plaintiffs, Matt Capelouto
and Christine Capelouto

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

Matt Capelouto and Christine Capelouto

Plaintiffs,

vs.

Brandon Michael McDowell, Justin Lee
McDowell, Jill McCarthy, and DOES 1-50,
INCLUSIVE,

Defendants.

Case No. **CVSW2109985**

COMPLAINT FOR DAMAGES

1. Wrongful Death
2. Violation of Drug Dealers Liability Act

1 Plaintiffs, Matt Capelouto and Christine Capelouto allege:

2 **FIRST CAUSE OF ACTION**

3 **(Wrongful Death as to all Defendants)**

4
5 1. The true names and capacities of the Defendants, DOES 1 through 50, whether
6 individual, corporate, associate or otherwise, are unknown to Plaintiffs at the time of filing this
7 Complaint and Plaintiffs, therefore, sues said Defendants by such fictitious names and will ask
8 leave of Court to amend this Complaint to show their true names or capacities when the same
9 have been ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the
10 DOE Defendants is, in some manner, responsible for the events and happenings herein set forth
11 and proximately caused injury and damages to the Plaintiffs as herein alleged.

12
13 2. Plaintiffs, Matt Capelouto and Christine Capelouto are individuals, residing in the
14 City of Temecula, County of Riverside, State of California. They are the parents of decedent,
15 Alexandra Capelouto (hereinafter "Alexandra").

16
17 3. Defendants, Brandon Michael McDowell, Justin Lee McDowell, and Jill
18 McCarthy are individuals, residing in the City of Riverside, County of Riverside, State of
19 California.

20
21 4. At all times herein mentioned, each of the Defendants was the agent and employee
22 of each of the remaining defendants and was at all times herein mentioned acting within the scope
23 of said agency and employment.

24
25 5. On or about December 22, 2019, Defendants Justin Lee McDowell, and Jill
26 McCarthy, and Does 1 to 50, inclusive, were the owners and occupants of a residential property
27 known commonly as 11434 Millard Dr., Riverside, California 92503 (hereinafter "Subject
28 Residence"). Defendant Brandon Michael McDowell is the adult child of Defendants Justin Lee
McDowell, and Jill McCarthy and was a permanent resident of their home at 1434 Millard Dr.,

1 Riverside, California 92503.

2 6. In December of 2019, Defendant Brandon Michael McDowell, and Does 1 to 50
3 inclusive, operated a business out of 11434 Millard Dr., Riverside, California 92503 comprised of
4 manufacturing, distribution, and sales of narcotics including, but not limited to oxycontin and
5 fentanyl. Defendants Justin Lee McDowell, and Jill McCarthy either had direct knowledge of the
6 operation of said business endeavor, negligently failed to take reasonable steps to discover the
7 operation, or exhibited reckless disregard in remaining intentionally ignorant of said operation.
8 Each such act and omission represents ratification and approval of the drug related activities
9 engaged in by Defendant Brandon Michael McDowell and Does 1 to 50, inclusive, out of the
10 subject residence.
11

12 7. On or about December 22, 2019, Defendant Brandon Michael McDowell was at
13 the subject residence. He was contacted via Snapchat by plaintiffs' decedent, Alexandra
14 Capelouto, who inquired about purchasing pure oxycontin from Defendant Brandon Michael
15 McDowell for recreational purposes. While at 11434 Millard Dr., Riverside, California 92503,
16 Defendant Brandon Michael McDowell informed plaintiffs' decedent that he was in possession of
17 pure oxycontin for sale and agreed to travel to the plaintiff's residence in Temecula, California to
18 deliver said oxycontin to Alexandra.
19

20 8. At approximately 8:30 – 9:00 p.m. on December 22, 2019, Defendant Brandon
21 Michael McDowell arrived at the plaintiff's home. He contacted plaintiffs' decedent via either
22 Snapchat or text message to inform her of his arrival.
23

24 9. Plaintiffs' decedent exited the home and met Defendant Brandon Michael
25 McDowell at his car outside the residence. Defendant Brandon Michael McDowell sold pills to
26 plaintiff's decedent that he represented to be the pure oxycontin that plaintiffs' decedent
27 requested. However, the pills were not pure oxycontin. Each pill actually contained a lethal dose
28

1 of fentanyl.

2 10. The pills were manufactured using fentanyl as either a filler or total replacement
3 for oxycontin in order to defraud purchasers and create a higher profit margin for the seller,
4 distributor, and manufacturer of the pills. They were manufactured to look identical to pure
5 oxycontin pills so that the alterations were undetectable by the purchaser or user.
6

7 11. Defendant Brandon Michael McDowell negligently, intentionally, or with reckless
8 disregard, misrepresented the content of the pills he sold to plaintiffs' decedent such that she was
9 not able to manage the quantity and nature of material she was about to ingest. That same
10 evening, Alexandra Capelouto did, in fact, consume one or more of the pills she purchased from
11 Defendant Brandon Michael McDowell.

12 12. The following day, on or about December 23, 2019, Alexandra Capelouto was
13 found unresponsive by the plaintiffs. She was ultimately pronounced dead with the cause of death
14 being a lethal dose of fentanyl, traced to the pills she purchased from Defendant Brandon Michael
15 McDowell on or about December 22, 2019.
16

17 13. The pills that Defendant Brandon Michael McDowell sold to plaintiff's decedent
18 were stored, prepared for distribution, and/or manufactured in the residence that he shared with
19 Defendants Justin Lee McDowell, and Jill McCarthy, with their knowledge, approval, negligence,
20 and/or reckless disregard.
21

22 14. Defendants' negligent and wrongful conduct at all times mentioned herein was
23 both extreme and outrageous and was done with the specific intent to cause, or with reckless
24 disregard of causing, serious harm and injury to plaintiffs' decedent, Alexandra Capelouto.

25 15. The conduct of Defendants did in fact, directly and proximately, cause Alexandra
26 Capelouto serious mental and physical distress, which resulted in her untimely death.

27 16. As a legal, direct and proximate result of the conduct of Defendants, and each of
28

1 them, including Does 1 through 50, Plaintiffs have suffered damages in an amount to be proven at
2 trial that exceeds the jurisdictional minimum of this Court.

3 **SECOND CAUSE OF ACTION**

4 (Violation of the Drug Dealer Liability Act "DDLA" as to
5 Defendant Brandon Michael McDowell and Does 1 to 50, Inclusive, only)

6
7 17. Plaintiffs re-allege and incorporate by reference all of the allegations in paragraphs
8 1 through 16 of this complaint as though fully set forth herein.

9 18. The California Drug Dealer Liability Act ("DDLA"), codified as Health and Safety
10 Code sections 11700, et seq., was enacted to provide a civil remedy for damages to persons
11 injured as a result of the use of an illegal controlled substance.

12 19. Health and Safety Code section 11705, subdivision (a)(1), which is part of the
13 DDLA, provides that a "parent, legal guardian, child, spouse, or sibling" of the individual
14 controlled substance user is entitled to bring an action for damages caused by an individual's use
15 of an illegal controlled substance.
16

17 20. On information and belief, Defendant Brandon Michael McDowell and Does 1 to
18 50 wrongfully and illegally supplied, marketed and distributed these controlled substances to
19 plaintiff's decedent, Alexandra Capelouto, on or about December 22, 2019, which either the same
20 or the day before her death. On or about December 22, 2019, Alexandra ingested these same
21 drugs and shortly thereafter died as a result.
22

23 21. As a result of the tortious conduct of Defendants, and each of them, including the
24 unlawful prescribing, procurement, distribution, furnishing, supplying, administering and
25 dispensing of illegal controlled substances, Plaintiffs have suffered severe damages that exceed
26 the jurisdictional minimum of this Court.
27
28

FIRST CAUSE OF ACTION

A. General damages in a sum according to proof;

B. Sums incurred and to be incurred for services to hospitals, physicians, surgeons, nurses
and other professional services, ambulance service, x-rays and other medical supplies and services;

C. Funeral and burial expenses;

D. Housekeeping expenses incurred and to be incurred;

E. Loss of love, companionship, affection, society, and solace;

F. Loss of income incurred and to be incurred according to proof;

G. For interest provided by law including, but not limited to, California Civil Code, Section
3291; and

H. Costs of suit and, for such other and further relief as the court deems proper.

SECOND CAUSE OF ACTION

A. General damages in a sum according to proof;

B. Sums incurred and to be incurred for services to hospitals, physicians, surgeons, nurses
and other professional services, ambulance service, x-rays and other medical supplies and services;

C. Loss of love, companionship, affection, society and solace;

D. Loss of income incurred and to be incurred according to proof;

E. Reasonable attorneys fees;

F. Exemplary damages;

G. For interest provided by law including, but not limited to, California Civil Code, Section
3291; and

H. Costs of suit and, for such other and further relief as the court deems proper.

1 Dated: November 30, 2021

LAW OFFICE OF ROBERT P. KARWIN

2
3 By:




Robert P. Karwin, Esq.
Attorneys for plaintiffs

4
5
6 Dated: November 30, 2021

TRUJILLO & TRUJILLO

7
8 By:



Melody A. Trujillo, Esq.
Attorneys for plaintiffs

EXHIBIT “3”

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MELODY A. TRUJILLO – SBN 165218

Attorneys for plaintiffs, Matt Capelouto
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

Matt Capelouto and Christine Capelouto,

Plaintiffs,

vs.

Brandon Michael McDowell and Does 1 to
50, inclusive,

Defendants.

Case No. CVSW2109985

PLAINTIFF'S STATEMENT OF THE CASE IN
SUPPORT OF REQUEST FOR ENTRY OF
DEFAULT JUDGMENT

Plaintiffs jointly submit the following Statement of the Case in support of their request
for entry of default judgment against defendant, Brandon Michael McDowell:

1. Plaintiffs, Matt Capelouto and Christine Capelouto are a married couple and the

- 1 biological parents of decedent, Alexandra (“Alex”) Capelouto.
- 2 2. In December of 2019, Alex was in her sophomore year Arizona State University,
- 3 with a major in Sociology.
- 4 3. On December 22, 2019, she was staying at her parent’s home for her winter break
- 5 from school. She was 20 years old.
- 6 4. She went on to the social media app Snapchat, and contacted the defendant, Brandon
- 7 Michael McDowell, to purchase Percocet. The defendant came to the home to sell
- 8 the Percocet to Alex. However, he sold her counterfeit pills that were manufactured
- 9 with Fentanyl.
- 10 5. That evening, Alex took one of the pills and died from Fentanyl poisoning.
- 11 6. McDowell was prosecuted under a federal statute for Possession with Intent to
- 12 Distribute Fentanyl. He pled guilty to the charges and is now in federal custody
- 13 serving up to 9 years for Alex’s death. Her mother, plaintiff Christine Capelouto,
- 14 was diagnosed with stage 4 triple negative breast cancer, which has metastasized to
- 15 her lungs. She attributes this condition to the depression and stress she has felt since
- 16 Alex’s death.
- 17 7. Alex’s father, Matt Capelouto, has become the preeminent spokesperson for this
- 18 issue, seeking to pass Alex’s Law, which would require courts to issue a written
- 19 admonishment to defendants convicted of a range of fentanyl-related offenses, from
- 20 possessing for sale to sharing or transporting the drug.
- 21 8. The plaintiff’s seek \$4,000,000 in general damages plus \$1,000,000 in punitive
- 22 damages. We believe this civil judgment would send a message to other fentanyl
- 23 peddlers as to the value of the lives lost by their callous actions and prompt them to
- 24 give up the trade, possibly saving other parents from experiencing this heartbreak.
- 25
- 26
- 27
- 28

1
2 Dated: November 19, 2023

LAW OFFICE OF ROBERT P. KARWIN

3
4 By:



Robert P. Karwin

*Attorneys for plaintiffs, Matt Capelouto and
Christine Capelouto*

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Attorneys for plaintiffs, Matt Capelouto
and Christine Capelouto

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

Matt Capelouto and Christine Capelouto

Plaintiffs,

vs.

Brandon Michael McDowell, Justin Lee
McDowell, Jill McCarthy, and DOES 1-50,
INCLUSIVE,

Defendants.

Case No. CVSW2109985

DECLARATION OF MATT CAPELOUTO IN
SUPPORT OF REQUEST FOR ENTRY OF
DEFAULT JUDGMENT

I, Matt Capelouto, declare as follows:

1. I am the plaintiff in the above-captioned matter.

2. I am personally familiar with the facts stated herein and could competently testify thereto should I be called upon to do so.
3. My wife, Christine Capelouto, and I are the biological parents of Alexandra Capelouto.
4. Alexandra was born February 24, 1999.
5. In December of 2019, she was in her sophomore year Arizona State University, with a major in Sociology. Attached hereto as Exhibit 1 is a photo of myself with Alex in her ASU dorm.
6. After graduation, her plan was to become a social worker so that she could help others.
7. On December 22, 2019, she was staying at our family home for her winter break from school. She was 20 years old.
8. Alexandra went on Snapchat and contacted an individual named Brandon McDowell in order to purchase the painkiller "Percocet" from McDowell. McDowell agreed to sell Percocet pills to Alexandra. He drove to my house and sold Alexandra some pills.
9. The pills were not Percocet as Alexandra thought. They were counterfeit pills manufactured with the deadly opioid fentanyl.
10. That evening, Alexandra ingested half of one of the pills. The fentanyl in the pill was a deadly dose. She died that evening as a result of the fentanyl poisoning.
11. Brandon McDowell was charged in federal court with a violation of Title 21, United States Code, Sections 841(a)(1), (b)(1)(c) – Possession with Intent to Distribute Fentanyl.
12. On July 1, 2022, McDowell pled guilty to the charges and was sentenced to 8 years in federal prison. I have attached a true and correct copy of his signed plea as Exhibit 2 to this declaration.
13. As part of the plea, McDowell specifically admits that knowingly intended to sell fentanyl to our daughter. (See Exhibit 2 – 6:11-7:23).

1 14. I will never say my daughter died of a drug overdose. She was deceived to death.

2 15. Since Alexandra's death, my wife and I have dedicated our lives to trying to prevent any
3 other parents from experiencing the absolute devastation and anguish that comes with losing
4 a child this way.

5 16. I serve as president of the non-profit druginducedhomicide.org and have worked tirelessly
6 with legislators attempting to pass Alexandra's law, which would require courts to issue a
7 written admonishment to defendants convicted of a range of fentanyl-related offenses, from
8 possessing for sale to sharing or transporting the drug. This would alert the defendant that
9 selling or giving away drugs could result in death, and that, if they do it again and somebody
10 dies as a result, they could be on the hook for murder.

11 17. In March of 2022, my wife, Christine, was diagnosed with stage 4 triple negative breast
12 cancer, which has metastasized to her lungs. I have no doubt that the grief of losing our
13 daughter caused stress and strain on her body that brought on the cancer. I am now facing
14 the possibility of losing my wife as a direct result of the death of our daughter. Attached
15 hereto as Exhibit 3 is a photo of Christine with Alex. Their smiles reflect the bond they
16 shared.

17 18. The intentional and despicable acts of Brandon McDowell have utterly destroyed our lives
18 and have taken a tremendous toll on our family.

19 19. Alex's three siblings, Skye (age 22) and Brooke (age 32) and Brittany (age 33) have also
20 been permanently impacted by this profound loss to our family. Exhibit 4, attached hereto,
21 is a photo of Alex with her sisters.

22 20. If there is anything I would wish for today, it would be to hear Alex's voice. Since the day
23 she was born, the sound of her voice filled our hearts and lives with love and hope.

1 21. Exhibit 5 attached hereto is the last photo Christine and I have, together, with Alex.

2 22. Counterfeit pills manufactured with Fentanyl in place of the expected ingredients pose one
3 of the faster growing dangers facing our society. In our case, McDowell engaged in that
4 crime knowingly and intentionally. Because of his callous disregard we will miss out on
5 attending Alex's graduation and sharing the milestones of our lives together.
6

7 23. We are seeking an award that will reflect our loss while, at the same time, sends a message
8 to others who engage in this nefarious activity.

9 24. Based on the foregoing, my wife Christine and I seek a joint award of \$5,025,000.00 against
10 Brandon McDowell for his intentional acts that took our beloved Alex from us.
11

12 I declare the foregoing to be true and correct under penalty of perjury pursuant to the laws of
13 the state of California.
14

15 Executed this 17th day of November at Temecula, California.
16

17 Date: 11/17/2023

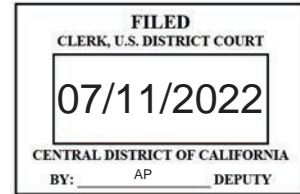
18 By: Matt Capelouto

19 Matt Capelouto, plaintiff/declarant
20
21
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23
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25
26

Exhibit 1



Exhibit 2



TRACY L. WILKISON
United States Attorney
SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division
STEPHEN T. MERRILL (Cal. Bar No. 255827)
Special Assistant United States Attorney
JOHN A. BALLA (Cal. Bar No. 295474)
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John.Balla@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRANDON MICHAEL MCDOWELL,
aka "trvpkid_69,"

Defendant.

No. ED CR 21-238-JGB

PLEA AGREEMENT FOR DEFENDANT
BRANDON MICHAEL MCDOWELL

1. This constitutes the plea agreement between Brandon Michael McDowell ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") in the above-captioned case. This agreement is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities.

DEFENDANT'S OBLIGATIONS

2. Defendant agrees to:

1 a. Give up the right to indictment by a grand jury and,
2 at the earliest opportunity requested by the USAO and provided by the
3 Court, appear and plead guilty to a one-count information in the form
4 attached to this agreement as Exhibit A or a substantially similar
5 form, which charges defendant with Possession with Intent to
6 Distribute Fentanyl in violation of 21 U.S.C. §§ 841(a)(1),
7 (b)(1)(C).

8 b. Not contest facts agreed to in this agreement.

9 c. Abide by all agreements regarding sentencing contained
10 in this agreement.

11 d. Appear for all court appearances, surrender as ordered
12 for service of sentence, obey all conditions of any bond, and obey
13 any other ongoing court order in this matter.

14 e. Not commit any crime; however, offenses that would be
15 excluded for sentencing purposes under United States Sentencing
16 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
17 within the scope of this agreement.

18 f. Be truthful at all times with the United States
19 Probation and Pretrial Services Office and the Court.

20 g. Pay the applicable special assessment at or before the
21 time of sentencing unless defendant has demonstrated a lack of
22 ability to pay such assessments.

23 h. Defendant agrees that any and all criminal debt
24 ordered by the Court will be due in full and immediately. The
25 government is not precluded from pursuing, in excess of any payment
26 schedule set by the Court, any and all available remedies by which to
27 satisfy defendant's payment of the full financial obligation,
28 including referral to the Treasury Offset Program.

1 i. Complete the Financial Disclosure Statement on a form
2 provided by the USAO and, within 30 days of defendant's entry of a
3 guilty plea, deliver the signed and dated statement, along with all
4 of the documents requested therein, to the USAO by either email at
5 usacac.FinLit@usdoj.gov (preferred) or mail to the USAO Financial
6 Litigation Section at 300 North Los Angeles Street, Suite 7516, Los
7 Angeles, CA 90012. Defendant agrees that defendant's ability to pay
8 criminal debt shall be assessed based on the completed Financial
9 Disclosure Statement and all required supporting documents, as well
10 as other relevant information relating to ability to pay.

11 j. Authorize the USAO to obtain a credit report upon
12 returning a signed copy of this plea agreement.

13 k. Consent to the USAO inspecting and copying all of
14 defendant's financial documents and financial information held by the
15 United States Probation and Pretrial Services Office.

16 THE USAO'S OBLIGATIONS

17 3. The USAO agrees to:

18 a. Not contest facts agreed to in this agreement.

19 b. Abide by all agreements regarding sentencing contained
20 in this agreement.

21 c. At the time of sentencing, move to dismiss the
22 underlying indictment as against defendant. Defendant agrees,
23 however, that at the time of sentencing the Court may consider any
24 dismissed charges in determining the applicable Sentencing Guidelines
25 range, the propriety and extent of any departure from that range, and
26 the sentence to be imposed.

27 d. At the time of sentencing, provided that defendant
28 demonstrates an acceptance of responsibility for the offense up to

1 and including the time of sentencing, recommend a two-level reduction
2 in the applicable Sentencing Guidelines offense level, pursuant to
3 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
4 additional one-level reduction if available under that section.

5 NATURE OF THE OFFENSE

6 4. Defendant understands that for defendant to be guilty of
7 the crime charged in the superseding information, that is, Possession
8 with Intent to Distribute Fentanyl, in violation of Title 21, United
9 States Code, Sections 841(a)(1), (b)(1)(C), the following must be
10 true:

- 11 a. First, defendant knowingly possessed fentanyl;
12 b. Second, defendant knew that it was fentanyl or some
13 other federally controlled substance; and
14 c. Third, defendant intended to distribute it to another
15 person.

16 PENALTIES AND RESTITUTION

17 5. Defendant understands that the statutory maximum sentence
18 that the Court can impose for a violation of Title 21, United States
19 Code, Sections 841(a)(1), (b)(1)(C), is: 20 years' imprisonment; a
20 lifetime period of supervised release; a fine of \$1,000,000 or twice
21 the gross gain or gross loss resulting from the offense, whichever is
22 greatest; and a mandatory special assessment of \$100.

23 6. Defendant understands that the statutory mandatory minimum
24 sentence that the Court must impose for a violation of 21 U.S.C.
25 §§ 841(a)(1), (b)(1)(C), is: a 3-year period of supervised release in
26 addition to any term of imprisonment, and a mandatory special
27 assessment of \$100.

1 7. Defendant understands that defendant will be required to
2 pay full restitution to the victim(s) of the offense to which
3 defendant is pleading guilty. Defendant agrees that, in return for
4 the USAO's compliance with its obligations under this agreement, the
5 Court may order restitution to persons other than the victim(s) of
6 the offense to which defendant is pleading guilty and in amounts
7 greater than those alleged in the count to which defendant is
8 pleading guilty. In particular, defendant agrees that the Court may
9 order restitution to any victim of any of the following for any
10 losses suffered by that victim as a result: (a) any relevant conduct,
11 as defined in U.S.S.G. § 1B1.3, in connection with the offense to
12 which defendant is pleading guilty; and (b) any counts dismissed
13 pursuant to this agreement as well as all relevant conduct, as
14 defined in U.S.S.G. § 1B1.3, in connection with those counts.

15 8. Defendant understands that supervised release is a period
16 of time following imprisonment during which defendant will be subject
17 to various restrictions and requirements. Defendant understands that
18 if defendant violates one or more of the conditions of any supervised
19 release imposed, defendant may be returned to prison for all or part
20 of the term of supervised release authorized by statute for the
21 offense that resulted in the term of supervised release, which could
22 result in defendant serving a total term of imprisonment greater than
23 the statutory maximum stated above.

24 9. Defendant understands that, by pleading guilty, defendant
25 may be giving up valuable government benefits and valuable civic
26 rights, such as the right to vote, the right to possess a firearm,
27 the right to hold office, and the right to serve on a jury. Defendant
28 understands that he is pleading guilty to a felony and that it is a

1 federal crime for a convicted felon to possess a firearm or
2 ammunition. Defendant understands that the conviction in this case
3 may also subject defendant to various other collateral consequences,
4 including but not limited to revocation of probation, parole, or
5 supervised release in another case and suspension or revocation of a
6 professional license. Defendant understands that unanticipated
7 collateral consequences will not serve as grounds to withdraw
8 defendant's guilty plea.

9 10. Defendant and his counsel have discussed the fact that, and
10 defendant understands that, if defendant is not a United States
11 citizen, the conviction in this case makes it practically inevitable
12 and a virtual certainty that defendant will be removed or deported
13 from the United States. Defendant may also be denied United States
14 citizenship and admission to the United States in the future.
15 Defendant understands that while there may be arguments that
16 defendant can raise in immigration proceedings to avoid or delay
17 removal, removal is presumptively mandatory and a virtual certainty
18 in this case. Defendant further understands that removal and
19 immigration consequences are the subject of a separate proceeding and
20 that no one, including his attorney or the Court, can predict to an
21 absolute certainty the effect of his conviction on his immigration
22 status. Defendant nevertheless affirms that he wants to plead guilty
23 regardless of any immigration consequences that his plea may entail,
24 even if the consequence is automatic removal from the United States.

25 FACTUAL BASIS

26 11. Defendant admits that defendant is, in fact, guilty of the
27 offense to which defendant is agreeing to plead guilty. Defendant
28 and the USAO agree to the statement of facts provided below and agree

1 that this statement of facts is sufficient to support a plea of
2 guilty to the charge described in this agreement and to establish the
3 Sentencing Guidelines factors set forth in paragraph 13 below but is
4 not meant to be a complete recitation of all facts relevant to the
5 underlying criminal conduct or all facts known to either party that
6 relate to that conduct.

7 On December 22, 2019, in Riverside County within the Central
8 District of California, defendant possessed fentanyl with intent to
9 distribute it to another. He in fact distributed the fentanyl to
10 Alexandra Capelouto, the use of which resulted in Alexandra's death
11 on or about December 23, 2019.

12 Specifically, on the night of December 22, 2019, Alexandra
13 Capelouto asked defendant if he could sell her Percocet pills, a
14 prescription painkiller. Defendant agreed to sell Alexandra Percocet
15 pills. Defendant drove to Alexandra's home in Temecula, California,
16 and sold her what turned out to be approximately 11 counterfeit
17 oxycodone pills that he later described to law enforcement as blue
18 "Oxys" or "M30s." Defendant knew it was illegal for him to sell the
19 pills and that they contained fentanyl or some other federally
20 controlled substance. Upon going to bed the night of December 22,
21 2019, Alexandra Capelouto ingested half of one of the pills. The
22 fentanyl entered her system, poisoning her body, and caused her
23 death.

24 SENTENCING FACTORS

25 12. Defendant understands that in determining defendant's
26 sentence the Court is required to calculate the applicable Sentencing
27 Guidelines range and to consider that range, possible departures
28 under the Sentencing Guidelines, and the other sentencing factors set

1 forth in 18 U.S.C. § 3553(a). Defendant understands that the
2 Sentencing Guidelines are advisory only, that defendant cannot have
3 any expectation of receiving a sentence within the calculated
4 Sentencing Guidelines range, and that after considering the
5 Sentencing Guidelines and the other § 3553(a) factors, the Court will
6 be free to exercise its discretion to impose any sentence it finds
7 appropriate up to the maximum set by statute for the crime of
8 conviction.

9 13. Defendant and the USAO agree to the following applicable
10 Sentencing Guidelines factors:

11 Base Offense Level: 38 U.S.S.G. § 2D1.1(a)(2)
12 Defendant and the USAO reserve the right to argue that additional
13 specific offense characteristics, adjustments, and departures under
14 the Sentencing Guidelines are appropriate.

15 14. Pursuant to U.S.S.G. §§ 1B1.2(a) and (c), the parties
16 stipulate that the defendant committed a separate violation of 21
17 U.S.C. § 841(b)(1)(C) (distribution of controlled substances
18 resulting in death), in that, on or about December 22, 2019, the
19 defendant knowingly and intentionally distributed fentanyl, the use
20 of which resulted in the death of A.C., and that such overdose death
21 resulting from the defendant's distribution of fentanyl constitutes a
22 more serious offense than the offense of conviction for purposes of
23 calculating the applicable Sentencing Guidelines offense level.
24 Accordingly, pursuant to U.S.S.G. §§ 2D1.1(a)(2), 1B1.2(a) and
25 1B1.2(c), the parties stipulate that the Court should calculate the
26 Sentencing Guidelines as if defendant had been convicted of the
27 offense described in this paragraph and apply a base offense level
28 38. The parties further stipulate that application of such a base

1 offense level, which is greater than the base offense level that
2 would otherwise apply, is independently supported by U.S.S.G. §
3 5K2.1. Defendant will not recommend, argue, or otherwise suggest
4 that the court impose a base offense level other than 38.

5 15. Defendant understands that there is no agreement as to
6 defendant's criminal history or criminal history category.

7 16. Defendant and the USAO reserve the right to argue for a
8 sentence outside the sentencing range established by the Sentencing
9 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
10 (a)(2), (a)(3), (a)(6), and (a)(7).

11 WAIVER OF CONSTITUTIONAL RIGHTS

12 17. Defendant understands that by pleading guilty, defendant
13 gives up the following rights:

14 a. The right to persist in a plea of not guilty.

15 b. The right to a speedy and public trial by jury.

16 c. The right to be represented by counsel -- and if
17 necessary have the Court appoint counsel -- at trial. Defendant
18 understands, however, that, defendant retains the right to be
19 represented by counsel -- and if necessary have the Court appoint
20 counsel -- at every other stage of the proceeding.

21 d. The right to be presumed innocent and to have the
22 burden of proof placed on the government to prove defendant guilty
23 beyond a reasonable doubt.

24 e. The right to confront and cross-examine witnesses
25 against defendant.

26 f. The right to testify and to present evidence in
27 opposition to the charges, including the right to compel the
28 attendance of witnesses to testify.

1 g. The right not to be compelled to testify, and, if
2 defendant chose not to testify or present evidence, to have that
3 choice not be used against defendant.

4 h. Any and all rights to pursue any affirmative defenses,
5 Fourth Amendment or Fifth Amendment claims, and other pretrial
6 motions that have been filed or could be filed.

7 WAIVER OF APPEAL OF CONVICTION

8 18. Defendant understands that, with the exception of an appeal
9 based on a claim that defendant's guilty plea was involuntary, by
10 pleading guilty defendant is waiving and giving up any right to
11 appeal defendant's conviction on the offense to which defendant is
12 pleading guilty. Defendant understands that this waiver includes,
13 but is not limited to, arguments that the statute to which defendant
14 is pleading guilty is unconstitutional, and any and all claims that
15 the statement of facts provided herein is insufficient to support
16 defendant's plea of guilty.

17 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

18 19. Defendant agrees that, provided the Court imposes a total
19 term of imprisonment on all counts of conviction of no more than 210
20 months, defendant gives up the right to appeal all of the following:
21 (a) the procedures and calculations used to determine and impose any
22 portion of the sentence; (b) the term of imprisonment imposed by the
23 Court; (c) the fine imposed by the Court, provided it is within the
24 statutory maximum; (d) to the extent permitted by law, the
25 constitutionality or legality of defendant's sentence, provided it is
26 within the statutory maximum; (f) the term of probation or supervised
27 release imposed by the Court, provided it is within the statutory
28 maximum; and (g) any of the following conditions of probation or

1 supervised release imposed by the Court: the conditions set forth in
2 Second Amended General Order 20-04 of this Court; the drug testing
3 conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the
4 alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

5 20. The USAO agrees that, provided (a) all portions of the
6 sentence are at or below the statutory maximum specified above and
7 (b) the Court imposes a term of imprisonment of no less than 168
8 months, the USAO gives up its right to appeal any portion of the
9 sentence.

10 RESULT OF WITHDRAWAL OF GUILTY PLEA

11 21. Defendant agrees that if, after entering a guilty plea
12 pursuant to this agreement, defendant seeks to withdraw and succeeds
13 in withdrawing defendant's guilty plea on any basis other than a
14 claim and finding that entry into this plea agreement was
15 involuntary, then (a) the USAO will be relieved of all of its
16 obligations under this agreement; and (b) should the USAO choose to
17 pursue any charge that was either dismissed or not filed as a result
18 of this agreement, then (i) any applicable statute of limitations
19 will be tolled between the date of defendant's signing of this
20 agreement and the filing commencing any such action; and
21 (ii) defendant waives and gives up all defenses based on the statute
22 of limitations, any claim of pre-indictment delay, or any speedy
23 trial claim with respect to any such action, except to the extent
24 that such defenses existed as of the date of defendant's signing this
25 agreement.

EFFECTIVE DATE OF AGREEMENT

22. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

BREACH OF AGREEMENT

23. Defendant agrees that if defendant, at any time after the signature of this agreement and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's obligations are material, a single breach of this agreement is sufficient for the USAO to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the USAO in writing. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, then: (a) if defendant has previously entered a guilty plea pursuant to this agreement, defendant will not be able to withdraw the guilty plea, and (b) the USAO will be relieved of all its obligations under this agreement.

24. Following the Court's finding of a knowing breach of this agreement by defendant, should the USAO choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then:

a. Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the filing commencing any such action.

b. Defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any

1 speedy trial claim with respect to any such action, except to the
2 extent that such defenses existed as of the date of defendant's
3 signing this agreement.

4 c. Defendant agrees that: (i) any statements made by
5 defendant, under oath, at the guilty plea hearing (if such a hearing
6 occurred prior to the breach); (ii) the agreed to factual basis
7 statement in this agreement; and (iii) any evidence derived from such
8 statements, shall be admissible against defendant in any such action
9 against defendant, and defendant waives and gives up any claim under
10 the United States Constitution, any statute, Rule 410 of the Federal
11 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
12 Procedure, or any other federal rule, that the statements or any
13 evidence derived from the statements should be suppressed or are
14 inadmissible.

15 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

16 OFFICE NOT PARTIES

17 25. Defendant understands that the Court and the United States
18 Probation and Pretrial Services Office are not parties to this
19 agreement and need not accept any of the USAO's sentencing
20 recommendations or the parties' agreements to facts or sentencing
21 factors.

22 26. Defendant understands that both defendant and the USAO are
23 free to: (a) supplement the facts by supplying relevant information
24 to the United States Probation and Pretrial Services Office and the
25 Court, (b) correct any and all factual misstatements relating to the
26 Court's Sentencing Guidelines calculations and determination of
27 sentence, and (c) argue on appeal and collateral review that the
28 Court's Sentencing Guidelines calculations and the sentence it

1 chooses to impose are not error, although each party agrees to
2 maintain its view that the calculations in paragraph 13 are
3 consistent with the facts of this case. While this paragraph permits
4 both the USAO and defendant to submit full and complete factual
5 information to the United States Probation and Pretrial Services
6 Office and the Court, even if that factual information may be viewed
7 as inconsistent with the facts agreed to in this agreement, this
8 paragraph does not affect defendant's and the USAO's obligations not
9 to contest the facts agreed to in this agreement.

10 27. Defendant understands that even if the Court ignores any
11 sentencing recommendation, finds facts or reaches conclusions
12 different from those agreed to, and/or imposes any sentence up to the
13 maximum established by statute, defendant cannot, for that reason,
14 withdraw defendant's guilty plea, and defendant will remain bound to
15 fulfill all defendant's obligations under this agreement. Defendant
16 understands that no one -- not the prosecutor, defendant's attorney,
17 or the Court -- can make a binding prediction or promise regarding
18 the sentence defendant will receive, except that it will be within
19 the statutory maximum.

20 NO ADDITIONAL AGREEMENTS

21 28. Defendant understands that, except as set forth herein,
22 there are no promises, understandings, or agreements between the USAO
23 and defendant or defendant's attorney, and that no additional
24 promise, understanding, or agreement may be entered into unless in a
25 writing signed by all parties or on the record in court.

26 ///

27 ///

1 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

2 29. The parties agree that this agreement will be considered
3 part of the record of defendant's guilty plea hearing as if the
4 entire agreement had been read into the record of the proceeding.

5 AGREED AND ACCEPTED

6 UNITED STATES ATTORNEY'S OFFICE
7 FOR THE CENTRAL DISTRICT OF
8 CALIFORNIA

9 TRACY L. WILKISON
10 United States Attorney



7/8/2022

11 STEPHEN T. MERRILL
12 Special Assistant U.S. Attorney
13 JOHN A. BALLA
14 Assistant United States Attorney

Date



15 BRANDON MICHAEL MCDOWELL
16 Defendant

7/11/22

Date



17 ANDREW BYRD
18 Deputy Federal Public Defender
19 Attorney for Defendant
20 BRANDON MICHAEL MCDOWELL

7/1/22

Date

21
22 CERTIFICATION OF DEFENDANT

23 I have read this agreement in its entirety. I have had enough
24 time to review and consider this agreement, and I have carefully and
25 thoroughly discussed every part of it with my attorney. I understand
26 the terms of this agreement, and I voluntarily agree to those terms.
27 I have discussed the evidence with my attorney, and my attorney has
28 advised me of my rights, of possible pretrial motions that might be

1 filed, of possible defenses that might be asserted either prior to or
2 at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a),
3 of relevant Sentencing Guidelines provisions, and of the consequences
4 of entering into this agreement. No promises, inducements, or
5 representations of any kind have been made to me other than those
6 contained in this agreement. No one has threatened or forced me in
7 any way to enter into this agreement. I am satisfied with the
8 representation of my attorney in this matter, and I am pleading
9 guilty because I am guilty of the charge and wish to take advantage
10 of the promises set forth in this agreement, and not for any other
11 reason.

12 
13 _____
14 BRANDON MICHAEL MCDOWELL
15 Defendant


7/1/22

Date

16 CERTIFICATION OF DEFENDANT'S ATTORNEY

17 I am Brandon Michael McDowell's attorney. I have carefully and
18 thoroughly discussed every part of this agreement with my client.
19 Further, I have fully advised my client of his rights, of possible
20 pretrial motions that might be filed, of possible defenses that might
21 be asserted either prior to or at trial, of the sentencing factors
22 set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
23 provisions, and of the consequences of entering into this agreement.
24 To my knowledge: no promises, inducements, or representations of any
25 kind have been made to my client other than those contained in this
26 agreement; no one has threatened or forced my client in any way to
27 enter into this agreement; my client's decision to enter into this
28 agreement is an informed and voluntary one; and the factual basis set

1 forth in this agreement is sufficient to support my client's entry of
2 a guilty plea pursuant to this agreement.

3
4  for
ANDREW BYRD
Deputy Federal Public Defender
Attorney for Defendant
BRANDON MICHAEL MCDOWELL

7/1/22
Date

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRANDON MICHAEL MCDOWELL,
aka "trvpkid_69,"

Defendant.

ED CR No. 21-238(A)-JGB

S U P E R S E D I N G
I N F O R M A T I O N

[21 U.S.C. §§ 841(a)(1),
(b)(1)(C): Possession with Intent
to Distribute Fentanyl]

The United States Attorney charges:

[21 U.S.C. §§ 841(a)(1), (b)(1)(C)]

On or about December 22, 2019, in Riverside County, within the
Central District of California, defendant BRANDON MICHAEL MCDOWELL,
also known as "trvpkid_69," knowingly and intentionally possessed

///

///

1 with intent to distribute fentanyl, a Schedule II narcotic drug
2 controlled substance.

3
4 TRACY L. WILKISON
5 United States Attorney

6
7 SCOTT M. GARRINGER
8 Assistant United States Attorney
9 Chief, Criminal Division

10 JERRY C. YANG
11 Assistant United States Attorney
12 Chief, Riverside Branch Office

13 STEPHEN T. MERILL
14 Special Assistant U.S. Attorney
15 JOHN A. BALLA
16 Assistant United States Attorney
17 Riverside Branch Office
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CERTIFICATE OF SERVICE

I, Stephanie Ascencio, declare:

That I am a citizen of the United States and a resident of or employed in Riverside County, California; that my business address is the Office of United States Attorney, 3403 Tenth Street, Suite 200, Riverside, California 92501; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of: **PLEA AGREEMENT FOR DEFENDANT**

BRANDON MICHAEL MCDOWELL

- | | |
|--|---|
| <input type="checkbox"/> Placed in a closed envelope for collection and inter-office delivery, addressed as follows: | <input type="checkbox"/> Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows: |
| <input type="checkbox"/> By hand delivery, addressed as follows: | <input checked="" type="checkbox"/> By email delivery, as follows:
<u>SEE ATTACHED</u> |
| <input type="checkbox"/> By messenger, as follows: | <input type="checkbox"/> By Federal Express, as follows: |

This Certificate is executed on **July 11, 2022**, in Riverside, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/ *Stephanie Ascencio*
Stephanie Ascencio
Legal Assistant

ATTACHMENT

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Young J. Kim - DFPD
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Exhibit 3



Exhibit 4




Exhibit 5



EXHIBIT “5”

JUD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Robert P. Karwin, Esq., 190573 The Law Office of Robert P. Karwin 29800 Bradley Rd. Ste 103 Menifee, CA 92586 TELEPHONE NO.: (951)246-4514 FAX NO. (Optional): (951)346-3684 E-MAIL ADDRESS (Optional): rkarwin@karwinlaw.com ATTORNEY FOR (Name): Christine Capelouto		FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE DEC 21 2023 M. Criel 						
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 30755-D Auld Road MAILING ADDRESS: 30755-D Auld Road CITY AND ZIP CODE: Murrieta, 92563 BRANCH NAME: Southwest Justice Center - Murrieta								
PLAINTIFF: Matt Capelouto, Christine Capelouto DEFENDANT: Brandon McDowell								
JUDGMENT <table><tr><td><input type="checkbox"/> By Clerk</td><td><input checked="" type="checkbox"/> By Default</td><td><input type="checkbox"/> After Court Trial</td></tr><tr><td><input checked="" type="checkbox"/> By Court</td><td><input type="checkbox"/> On Stipulation</td><td><input type="checkbox"/> Defendant Did Not Appear at Trial</td></tr></table>		<input type="checkbox"/> By Clerk	<input checked="" type="checkbox"/> By Default	<input type="checkbox"/> After Court Trial	<input checked="" type="checkbox"/> By Court	<input type="checkbox"/> On Stipulation	<input type="checkbox"/> Defendant Did Not Appear at Trial	CASE NUMBER: CVSW2109985
<input type="checkbox"/> By Clerk	<input checked="" type="checkbox"/> By Default	<input type="checkbox"/> After Court Trial						
<input checked="" type="checkbox"/> By Court	<input type="checkbox"/> On Stipulation	<input type="checkbox"/> Defendant Did Not Appear at Trial						

JUDGMENT

1. ☒ **BY DEFAULT**
- Defendant was properly served with a copy of the summons and complaint.
 - Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
 - Defendant's default was entered by the clerk upon plaintiff's application.
 - ☐ **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
 - ☒ **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
 - ☐ plaintiff's testimony and other evidence.
 - ☒ plaintiff's written declaration (Code Civ. Proc., § 585(d)).
2. ☐ **ON STIPULATION**
- Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
 - ☐ the signed written stipulation was filed in the case.
 - ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.
3. ☐ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
- The case was tried on (date and time):
before (name of judicial officer):
 - Appearances by:

<input type="checkbox"/> Plaintiff (name each):	<input type="checkbox"/> Plaintiff's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
<input type="checkbox"/> Defendant (name each):	<input type="checkbox"/> Defendant's attorney (name each):
(1)	(1)
(2)	(2)
<input type="checkbox"/> Continued on Attachment 3b.	
 - ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.
 - ☒ A statement of decision (Code Civ. Proc., § 632) ☒ was not ☐ was requested.

Page 1 of 2

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PLAINTIFF: Matt Capelouto	CASE NUMBER: CVSW2109985
DEFENDANT: Brandon McDowell	

JUDGMENT IS ENTERED AS FOLLOWS BY: ☒ THE COURT ☐ THE CLERK

4. ☐ **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

- a. ☒ for plaintiff (*name each*):
Matt Capelouto
Christine Capelouto
and against defendant (*names*):
Brandon Michael McDowell

- c. ☐ for cross-complainant (*name each*):

and against cross-defendant (*name each*):

☐ Continued on Attachment 5a.

☐ Continued on Attachment 5c.

- b. ☐ for defendant (*name each*):

- d. ☐ for cross-defendant (*name each*):

6. **Amount.**

- a. ☒ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	5,025,000
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input checked="" type="checkbox"/> Costs	\$	735
(5) <input type="checkbox"/> Other (<i>specify</i>):	\$	
(6) TOTAL	\$	5025735

- c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:


(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other (<i>specify</i>):	\$	
(6) TOTAL	\$	0

- b. ☐ Plaintiff to receive nothing from defendant named in item 5b.
☐ Defendant named in item 5b to recover costs \$
☐ and attorney fees \$

- d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.
☐ Cross-defendant named in item 5d to recover costs \$
☐ and attorney fees \$

7. ☒ Other (*specify*): **See attachment 7**

Date: **12/19/23**

☐ 
JUDICIAL OFFICER **CHAD W. FIRETAG**

Date: ☐ Clerk, by _____, Deputy

(SEAL)

CLERK'S CERTIFICATE (*Optional*)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by _____, Deputy

MC-025

SHORT TITLE: Capelouto v. McDowell	CASE NUMBER: CVSW2109985
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ATTACHMENT (Number): 7

(This Attachment may be used with any Judicial Council form.)

Defendant Brandon Michael McDowell's selling harmful narcotics such as fentanyl, particularly under the false premise that they were prescription painkillers, was both extreme and outrageous, was intentional, done without just cause or excuse, wilful and malicious, and was done with the specific intent to cause serious harm and injury to plaintiffs' decedent, Alexandra Capelouto, and/or was a categorically harmful activity, and that harm was substantially certain to occur as a result of his actions.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 3 of 3
(Add pages as required)

EXHIBIT “6”

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e-mail: cs@locs.com

Attorneys For Plaintiffs, Matt Capelouto and Christine Capelouto

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re

BRANDON MICHAEL MCDOWELL,
aka "trvpkid_69,"

Debtor

MATT CAPELOUTO AND CHRISTINE
CAPELOUTO,

Plaintiffs

vs.

BRANDON MICHAEL MCDOWELL,
aka "trvpkid_69,"

Defendant

Case No. 6:22-bk-14752-MH

Assigned to the Honorable Mark D. Houle

Chapter 7

**COMPLAINT FOR
NONDISCHARGEABILITY OF DEBT
PURSUANT TO 11 USC § 523(a)(6) &
FOR DENIAL OF DISCHARGE
PURSUANT TO 11 USC § 727(a)**

**TO THE HONORABLE JUDGE MARK D. HOULE, UNITED STATES
BANKRUPTCY COURT JUDGE::**

Matt & Christine Capelouto ("Capelouto") by and through their respective counsel,
complain and allege as follows:

CORE/NON-CORE DESIGNATION

1. In accordance with Local Bankruptcy Rule 7008-1, Capelouto alleges that this adversary proceeding constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(I) and (J). Capelouto acknowledges that the Court has the power to enter final orders and judgments in this matter. The Capelouto's also consents to the Court's entry of final orders and judgments in this matter.

JURISDICTION AND VENUE

2. Defendant and Debtor Brandon Michael McDowell ("Debtor" and/or "McDowell") filed a voluntary chapter 7 petition for relief under Title 11 of the United States Code on 12-21-2022 (the "Petition Date") , Case # 6:22-bk-14752-MH (the "Petition") in the United States Bankruptcy Court, Central District of California, Riverside Division (the "Bankruptcy Court") commencing the instant bankruptcy case. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157.
3. The venue is proper in this Court pursuant to 28 U.S.C. § 1409.

PARTIES

4. The following is a description of the relevant parties involved in the facts forming the basis of this Complaint.
5. The Capelouto's are the bereaved parents of their 20-year old daughter Alexandra Capelouto ("Alexandra").
6. The Capelouto's are informed and believe that McDowell is a 23-year old individual residing in Los Angeles, California, currently incarcerated in prison at FCI Terminal Island, 1299 Seaside Avenue, San Pedro, California 90731, prisoner # 79243-509. McDowell is represented by Summer M Shaw of Shaw & Hanover, PC.

GENERAL ALLEGATIONS

7. The following general allegations form the background for the Capelouto's claims for relief against McDowell.
8. The Capelouto's are informed and believe that on or about 12-22-2019, McDowell resided and operated a business out of 11434 Millard Dr., Riverside, California 92503 comprised

1 of manufacturing, distribution, and sales of narcotics including, but not limited to
2 oxycontin and fentanyl.

3 9. The Capelouto's are informed and believe that on or about 12-22-2019, McDowell was
4 contacted via Snapchat by Alexandra, who inquired about purchasing Percocet pills, a
5 prescription painkiller.

6 10. The Capelouto's are informed and believe that McDowell agreed to sell Alexandra
7 Percocet/Oxycontin pills.

8 11. The Capelouto's are informed and believe that McDowell sold 11 pills to Alexandra that
9 he represented to be the pure Percocet/Oxycontin Alexandra requested, that he later
10 described to law enforcement as blue "Oxys" or "M30s." However, the pills were not pure
11 Percocet/Oxycontin. Each pill actually contained a lethal dose of fentanyl.¹

12 12. The Capelouto's are informed and believe that the pills were manufactured using fentanyl
13 as either a filler or total replacement for Percocet/Oxycontin in order to defraud purchasers
14 and create a higher profit margin for the seller, distributor, and manufacturer of the pills.
15 They were manufactured to look identical to pure oxycontin pills so that the alterations
16 were undetectable by the purchaser or user.

17 13. The Capelouto's are informed and believe that McDowell knew that it was illegal for him
18

19 ¹According to the CDC, there were 70,601 overdose deaths involving synthetic opioids other
20 than methadone (primarily fentanyl) in the United States in 2021. This represents a 23.3% increase
21 from the previous year. Fentanyl is a powerful synthetic opioid that is 50 to 100 times more potent
22 than morphine. It is often mixed with other drugs, such as heroin, cocaine, and methamphetamine,
23 and can be deadly even in small doses. Fentanyl works by binding to opioid receptors in the brain and
24 spinal cord. This binding slows down the body's respiratory system, which can lead to respiratory
25 arrest and death. Because of fentanyl's extreme potency, the risk of overdose death is great,
26 particularly when the user is inexperienced or unaware of what substance he or she is using. See, e.g.
27 *United States v. Harris*, 774 Fed. Appx. 937, 941 (6th Cir. 2019) (quoting the Sentencing
28 Commission's finding. The rise in fentanyl-related deaths is a major public health crisis in the United
States. Here is the national death toll for deaths by fentanyl for the years 2019-2023:

<u>Year</u>	<u>Number of deaths</u>
2019	50,100
2020	69,710
2021	70,601
2022	106,699 (provisional)
2023	110,000 (estimated)

1 to sell the pills (to Alexandra) and that they contained fentanyl or some other federally
2 controlled substance.

3 14. The Capelouto's are informed and believe that prior to 12-22-2019, McDowell knew that
4 ingestion of Fentanyl was dangerous.

5 15. The Capelouto's are informed and believe that prior to 12-22-2019, McDowell knew that
6 ingestion of Fentanyl could cause death in humans.

7 16. The Capelouto's are informed and believe that on 12-22-2019, McDowell knew that
8 ingestion of Fentanyl could cause death to Alexandra.

9 17. The Capelouto's are informed and believe that on 12-22-2019, McDowell had not taken
10 any steps to mitigate the risk of harm, such as providing warnings to Alexandra about the
11 dangers of Fentanyl. In fact, it is much worse, as McDowell lied to Alexandra that the pills
12 were Percocet/Oxycontin and withheld the truth from her that the pills were Fentanyl.

13 18. The Capelouto's are informed and believe that upon going to bed the night of 12-22-2019,
14 Alexandra ingested half of one of the pills. The Fentanyl entered her system, poisoning her
15 body, and caused her death.

16 19. The Capelouto's are informed and believe that McDowell intentionally, misrepresented the
17 content of the pills he sold to Alexandra such that she was not able to manage the quantity
18 and nature of material she was about to ingest. That same evening, Alexandra did, in fact,
19 consume one or more of the pills she purchased from McDowell.

20 20. The Capelouto's are informed and believe that the following day, on or about 12-23-2019,
21 Alexandra was found unresponsive by her parents. She was ultimately pronounced dead
22 with the cause of death being a lethal dose of fentanyl, traced to the pills she purchased
23 from McDowell on or about 12-22-2019.

24 21. In *United States of America v. Brandon Michael McDowell*, aka "trvpkid_69," # ED CR
25 21-238-JGB, on 7-11-2022, McDowell signed a *Plea Agreement*, with the United States
26 Attorney's Office for the Central District of California, where he pled guilty of the crime
27 of Possession with Intent to Distribute Fentanyl, in violation of 21 USC §§
28

841(a)(1)(b)(1)(c) [Doc-32].²

22. McDowell's *Plea Agreement* admitted that he: (1) knowingly and intentionally possessed fentanyl; (2) knowingly and intentionally distributed fentanyl; (3) knowingly and intentionally distributed fentanyl to Alexandra - the use of which resulted in her death by overdose. McDowell also acknowledged that he will be required to pay full restitution to the victim(s) of the offense to which defendant is pleading guilty.
23. McDowell's *Plea Agreement*, agreed that: any statements made by him, under oath, at the guilty plea hearing, and evidence derived from such statements, shall be admissible against him in any such action against him, and he waived and gave up any claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence derived from the statements should be suppressed or are inadmissible.
24. On 11-30-2022, the Capeloutos sued McDowell in the Superior Court of the State of California, Riverside County, # CVSW219985 (the "State Court Case"), pursuant to the Drug Dealer Liability Act "DDLA" codified as Health and Safety Code sections 11700, et seq, for the wrongful death of Alexandra, who on 12-22-2019, McDowell illegally sold Percocet and/or Oxycontin pills (blue "Oxys" or "M30s") containing lethal doses of fentanyl, which caused her death.
25. The Capelouto's are informed and believe that McDowell's selling harmful narcotics such as fentanyl, particularly under the false premise that they were prescription painkillers, was both extreme and outrageous, were intentional, done without just cause or excuse, wilful and malicious, and was done with the specific intent to cause serious harm and injury to Alexandra, and/or was a categorically harmful activity, and that harm was substantially certain to occur as a result of his actions.

²21 USC §§ 841(a)(1)(b)(1)(C) provides that any person who knowingly or intentionally distributes, or possesses with intent to distribute, a Schedule III, IV, or V controlled substance, as defined in the Controlled Substances Act, shall be punished by imprisonment for up to five years, a fine, or both.

- 1 26. The Capelouto's are informed and believe that the conduct of McDowell did in fact,
2 directly and proximately, cause Alexandra serious mental and physical distress, which
3 resulted in her untimely death.
- 4 27. The Capelouto's are informed and believe that as a legal, direct and proximate result of the
5 conduct of McDowell, Alexandra and her parents suffered damages. Per the *Statement of*
6 *Damages* filed in the State Court Case (the "Statement of Damages"), in the amount is
7 \$5,000,000.00.
- 8 28. The Capeloutos have gone through enough hell as a result of McDowell's illegal actions.
9 They must now live a painful life of bereavement without their daughter. To quote Matt
10 Capelouto's gut-wrenching *Victim Impact Statement*:
- 11 *Alex's murder has taken even more from us.*
- 12 *Losing her child - the strain and unbearable stress that was put upon my beautiful*
13 *wife by the defendant and his greed ...*
- 14 *Look, we all know, there's no greater pain than having a child stolen from you - it*
15 *puts a weight and strain on a soul that can't be measured.*
- 16 *But I believe all this pain and despair is the cause of my wife's cancer, which is*
17 *literally killing her as I stand here and talk with you.*
- 18 *With no history of cancer in her family, this deadly disease crept into our*
19 *family's lives - just like this murderer did - and eventually, it will take her away*
20 *from me as well.*
- 21 *And we will be the ones struggling to survive the chaotic, debilitating waves of*
22 *destruction that he's left in his wake.*
- 23 *Stand beside us in our grief. Feel what we are feeling. Absorb a tiny piece of the*
24 *pain we are enduring. A pain that is - to this day - ripping people I love more than*
25 *anything away from me.*

22 **FIRST CLAIM FOR RELIEF**

23 *(For Determination that McDowell's Debt to the Capeloutos is NonDischargeable*
24 *Under 11 USC § 523(a)(6))*

- 24 29. The Capelouto's incorporate by reference and reallege each of the allegations set forth in
25 paragraphs 1 through 28 as though set forth in full.
- 26 30. 11 USC § 523(a)(6), provides that a debt that arises from willful and malicious injury by
27 the debtor to another entity or to the property of another entity in nondischargeable.
- 28

1 31. The Capelouto's are informed and believe that McDowell's selling harmful narcotics such
2 as fentanyl, particularly under the false premise that they were prescription painkillers,
3 was both extreme and outrageous, was intentional, done without just cause or excuse,
4 wilful and malicious, and was done with the specific intent to cause serious harm and
5 injury to Alexandra, and/or was a categorically harmful activity, and that harm was
6 substantially certain to occur as a result of his actions.

7 32. McDowell's Plea Agreement admitted that he: (1) knowingly and intentionally possessed
8 fentanyl; (2) knowingly and intentionally distributed fentanyl; (3) knowingly and
9 intentionally distributed fentanyl to Alexandra - the use of which resulted in her death by
10 overdose.

11 33. The Capelouto's are entitled to a judgment that the damages from the wrongful death of
12 their daughter Alexandra are deemed to be nondischargeable under 11 USC § 523(a)(6).

13 **SECOND CLAIM FOR RELIEF**

14 *(For Denial of McDowell's Discharge Under 11 USC § 727(a))*

15 34. The Capelouto's incorporate by reference and reallege each of the allegations set forth in
16 paragraphs 1 through 33 as though set forth in full.

17 35. 11 USC § 727(a)(4)(A), provides that a Debtor will be denied a discharge if he knowingly
18 and fraudulently made a false oath or account regarding the Bankruptcy.

19 36. McDowell's Statement of Financial Information # 4 lists no income during 2022, and for
20 the two previous calendar years 2021, and 2020 (the Petition Date was 12-21-2022).

21 37. The Capelouto's are informed and believe that McDowell earned substantial income
22 selling drugs during this period of time with virtually no expenses since he lived at home
23 with his parents, and therefore lied in his bankruptcy, and his discharge be denied.

24 38. McDowell's Schedule H lists no Co-Debtors, omitting his parents Justin Lee McDowell
25 and Jill McCarthy who are co-defendants in the Capelouto's state court lawsuit.

26 39. The Capelouto's are entitled to a judgment that McDowell's discharge be denied under 11
27 USC § 727(a).

28

PRAYER FOR RELIEF

WHEREFORE, the Capelouto's pray for Judgment against McDowell as follows:

1. That McDowell is indebted to the Capelouto's for actual damages in an amount not less than \$5,000,000.00;
2. That McDowell is indebted to the Capelouto's for attorneys' fees, expenses, and other costs and charges of collection accrued after the entry of judgment until their claim is paid in full;
3. That the debt McDowell owes to the Capelouto's, and any and all other claims, debts and damages proven at trial, arising from or relating to the allegations herein are determined to be not dischargeable pursuant to 11 USC § 523(a)(6).
4. That McDowell be denied a discharge pursuant to 11 USC § 727(a)(4)(A);
5. For costs of suit; and
6. For such other and further relief as the Court deems proper.

DATED: May 11, 2023

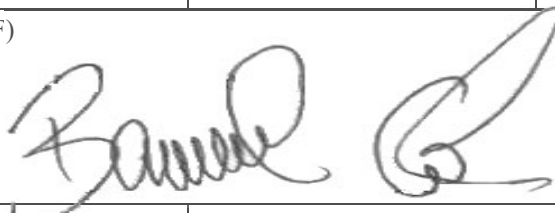
LAW OFFICE OF BARUCH C. COHEN
A Professional Law Corporation

By /s/ Baruch C. Cohen
Baruch C. Cohen, Esq.
*Attorneys For Plaintiffs, Matt Capelouto and
Christine Capelouto*

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS MATT CAPELOUTO AND CHRISTINE CAPELOUTO		DEFENDANTS BRANDON MICHAEL MCDOWELL, aka “trvpkid_69”
ATTORNEYS (Firm Name, Address, and Telephone No.) Baruch C. Cohen, Esq. (SBN 159455) (323) 937-4501 LAW OFFICE OF BARUCH C. COHEN, A Professional Law Corporation 4929 Wilshire Boulevard, Suite 940, Los Angeles CA 90010		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR NONDISCHARGEABILITY OF DEBT PURSUANT TO 11 USC § 523(a)(6) & FOR DENIAL OF DISCHARGE PURSUANT TO 11 USC § 727(a)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input checked="" type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input checked="" type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$ 5,000,000.00
Other Relief Sought		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR BRANDON MICHAEL MCDOWELL, aka "trvpkid_69"		BANKRUPTCY CASE NO. 6:22-bk-14752-MH
DISTRICT IN WHICH CASE IS PENDING Central District of California	DIVISION OFFICE Riverside	NAME OF JUDGE Houle
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 5/11/2023	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Baruch C. Cohen, Esq.	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

4929 Wilshire Boulevard, Suite 940, Los Angeles, California 90010.

A true and correct copy of the foregoing document entitled: **PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT UNDER LBR 7055-1** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 9/5/2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Baruch C Cohen bcc@BaruchCohenEsq.com, paralegal@baruchcohenesq.com
US Trustee (RS) ustpregion16.rs.ecf@usdoj.gov
Robert Whitmore (TR) rswtrustee@yahoo.com, rwhitmore@ecf.axosfs.com

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On 9/5/2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Brandon Michael McDowell
Register No. 79243-509
FCI Terminal Island, Federal Correctional Institution
PO Box 3007
San Pedro CA 90733

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 9/5/2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Personal Service: Hon. Mark D. Houle, 3420 Twelfth St., Riverside, CA 92501
Via Email: Robert P. Karwin, Esq., rkarwin@karwinlaw.com

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

9/5/2024
Date

Baruch C. Cohen, Esq.
Printed Name

/s/ Baruch C. Cohen
Signature